

STUDY

Requested by the ECON committee

Monetary Dialogue Papers, September 2020



Accountability Mechanisms of the Bank of England and of the European Central Bank



Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies
Author: Rosa M. LASTRA
PE 652.744 - September 2020

EN

Accountability Mechanisms of the Bank of England and of the European Central Bank

Monetary Dialogue Papers
September 2020

Abstract

This paper analyses the accountability mechanisms of the European Central Bank and of the Bank of England and focuses on parliamentary accountability for the monetary policy functions. The paper suggests ways to improve the Monetary Dialogue between the ECB and the Committee on Economic and Monetary Affairs (European Parliament).

This document was provided by Policy Department A at the request of the Committee on Economic and Monetary Affairs (ECON).

This document was requested by the European Parliament's Committee on Economic and Monetary Affairs.

AUTHORS

Rosa M. LASTRA, CCLS, Queen Mary University of London

ADMINISTRATOR RESPONSIBLE

Drazen RAKIC

EDITORIAL ASSISTANT

Janetta CUJKOVA

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Economic, Scientific and Quality of Life Policies

European Parliament

L-2929 - Luxembourg

Email: Poldep-Economy-Science@ep.europa.eu

Manuscript completed: September 2020

Date of publication: September 2020

© European Union, 2020

This document is available on the internet at:

<https://www.europarl.europa.eu/committees/en/econ/econ-policies/monetary-dialogue>

DISCLAIMER AND COPYRIGHT

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

For citation purposes, the study should be referenced as: Lastra, R. M., *Accountability Mechanisms of the Bank of England and of the European Central Bank*, Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.

CONTENTS

LIST OF ABBREVIATIONS	4
EXECUTIVE SUMMARY	5
1. INTRODUCTION	6
2. ACCOUNTABILITY, LEGITIMACY AND TRANSPARENCY	7
2.1. Accountability	7
2.2. Legitimacy	10
2.3. Transparency	11
3. THE BANK OF ENGLAND	13
3.1. The Bank of England Act 1998	13
3.2. The Financial Services Act 2012 and post-crisis reforms	14
3.2.1. Transparency	15
3.2.2. Governance of the Bank	15
3.2.3. The Policy Committees	16
3.3. The Bank of England and Financial Services Act 2016	16
3.4. The role of the National Audit Office and the MoU with the Bank of England	17
3.5. The design of parliamentary accountability – the Treasury Committee of the House of Commons	18
3.6. Relationship with the HMT and ‘override powers’	20
4. THE EUROPEAN CENTRAL BANK	23
4.1. Accountability of the European Central Bank	23
4.2. The relationship between the European Central Bank and the European Parliament	24
4.3. Locus of parliamentary accountability	26
4.4. Ways of improving the Monetary Dialogue	27
4.5. Transparency	29
5. CONCLUDING OBSERVATIONS	31
ANNEX	33
REFERENCES	35

LIST OF ABBREVIATIONS

CJEU	Court of Justice of the European Union
EAC	Economic Affairs Committee
EAOS	Euro Area Oversight Subcommittee
ECON	European Parliament's Committee on Economic and Monetary Affairs
ECB	European Central Bank
EP	European Parliament
ESCB	European System of Central Banks
FCA	Financial Conduct Authority
FED	Federal Reserve
FOMC	Federal Open Market Committee
FPC	Financial Policy Committee
GFC	Global Financial Crisis
HC	House of Commons
HMT	Her Majesty's Treasury
IEO	Independent Evaluation Office
MEP	Member of European Parliament
MOU	Memorandum of Understanding
MPC	Monetary Policy Committee
NAO	National Audit Office
NCB	National Central Bank
PAC	Public Accounts Committee
PRA	Prudential Regulation Authority
PRC	Prudential Regulation Committee
QE	Quantitative Easing
SSM	Single Supervisory System
TFEU	Treaty on the Functioning of the European Union
TSC	Treasury Select Committee

EXECUTIVE SUMMARY

- In a democratic system governed by the rule of law, **central bank independence must always be accompanied by adequate mechanisms of accountability.**
- **While too broad independence may lead to an unacceptable ‘state within the state’, too much accountability threatens the effectiveness of independence.** The design of ‘accountable’ independence varies across jurisdictions.
- **Institutional accountability ought to be ‘diversified’ (*trias politica*),** encompassing parliamentary oversight, judicial review, audit control, and a degree of ‘executive’ responsibility. The emphasis of this paper is on accountability to Parliament.
- **Performance control is conditional upon the objectives and targets imposed upon the central bank, while the principle of transparency is a market-based form of accountability.**
- **Public support (*de facto* accountability) contributes to societal legitimacy.**
- **The UK experience – presented in this paper – is significant** in that it has expanded and reformed the accountability arrangements (parliamentary oversight and others) of the Bank of England in response to the expansion of the Bank’s powers in recent years.
- **The role of the ECB has also grown significantly in response to the global financial crisis and to COVID-19.** The pandemic also evidences the need for better coordination in economic policy making.
- **This paper focuses on accountability for the monetary policy functions,** though both the ECB and the Bank of England have a wide range of other functions (including prudential supervision post GFC).
- **The adequate locus of institutional accountability for the ECB in the conduct of monetary policy resides at the European level** (judicial review by the European Court of Justice and accountability to the European Parliament/Committee on Economic and Monetary Affairs - ECON).
- **This paper recommends that European Parliament/parliamentary accountability be strengthened** and that the ‘Monetary dialogue’ be renamed as ‘Monetary hearings’ reflecting the need for enhanced oversight.
- **In terms of the content of such ‘hearings’, compliance with the ECB mandate (primary and secondary objectives) will remain of paramount importance** and must be continuously explained and justified. Hearings are particularly important when the central bank navigates through a crisis.
- The paper seconds the **establishment of a euro area subcommittee within ECON** to scrutinise monetary policy.
- **Effective audit control provides a basis and input for subsequent parliamentary oversight and improves transparency.**
- **ECB monetary policy measures must be subject to a proportionality test when subject to judicial review** by the Court of Justice of the European Union (Weiss).
- **The distributional and other effects of monetary policy are important issues from the perspective of democratic legitimacy** and must be considered by the EP/ECON.

1. INTRODUCTION

In a democratic system governed by the rule of law (like the EU is) central bank independence must always be accompanied by adequate mechanisms of accountability.

This paper is written at the request of European Parliament's Committee on Economic and Monetary Affairs (ECON) in preparation for the September 2020 'Monetary Dialogue' and aims to cast some light on possible ways to improve the accountability framework of the European Central Bank (ECB) in the conduct of monetary policy – in particular the relationship between the ECB and the European Parliament in the 'Monetary Dialogue' – taking into account the institutional balance enshrined in the Treaty, standing practices and recent developments. The paper also presents the accountability mechanisms of the Bank of England, as a comparative case study.

The impact of the ECB has grown significantly in response to the global financial crisis (GFC) and to COVID-19. The GFC changed the traditional understanding of the instruments of monetary policy, adapting the conventional tools, namely, open market operations, discount policies and reserve requirements, and adding a range of unconventional instruments. This has brought monetary policy into uncharted territory. The distributional and other effects of monetary policy are important issues from the perspective of democratic legitimacy and the evolving framework of enhanced accountability.

This report is divided into three parts.* Part 1 provides definitions of accountability, legitimacy and transparency and articulates the concept of 'diversified accountability'. Though the report focuses on parliamentary accountability, it also considers other mechanisms of accountability, notably judicial review, audit control and the relationship with the executive. In the same way that there are different degrees and indicators of central bank independence, there are also variations in the design and level of central bank accountability.

Part 2 of this report surveys the accountability arrangements and mechanisms of the Bank of England. Part 3 examines the accountability of the European Central Bank. The key issue is to strike the right balance between independence and accountability.¹

* Thanks to Marco Bodellini for research assistance and to Fabian Amtenbrink, Christina Skinner, Paul Tucker and Jens van 't Klooster for helpful suggestions.

¹ Though the ECB and the Bank of England have a wide range of other functions (in particular supervisory responsibilities), this report focuses on accountability for the monetary policy functions. Accountability varies across functions.

I have dealt with the concept of central bank accountability extensively in my publications, commencing with an article on "The independence of the ESCB" (a seminal contribution) published by the Harvard International Law Journal in the spring of 1992 and then in: *Central Banking and Banking Regulation* (LSE, 1996, ch. 1), *Legal Foundations of International Monetary Stability* (OUP, 2006, ch. 2 and ch. 7) and *International Financial and Monetary Law* (2015, ch. 2 and ch. 7). I also co-authored a book chapter with Heba Shams ('Public Accountability in the Financial Sector', in Eilis Ferrán and Charles Goodhart (eds.), *Regulating Financial Services and Markets in the XXIst Century*, Hart Publishing, Oxford, 2001, pp. 165-188; a book chapter with Geoffrey Miller ('Central Bank Independence in Ordinary and Extraordinary Times' in Jan Kleineman (ed), *Central Bank Independence. The Economic Foundations, the Constitutional Implications and Democratic Accountability* (The Hague: Kluwer Law International, 2001, pp. 31-50); a paper with Fabian Amtenbrink ('Securing Democratic Accountability of Financial Regulatory Agencies – A Theoretical framework' in *Mitigating Risk in the Context of Safety and Security. How Relevant is a Rational Approach?*, edited by R.V. de Mulder (Rotterdam: Erasmus School of Law & Research School for Safety and Security (OMV) 2008, pp 115-132); an article with Luis Garicano ('Towards a new Architecture for Financial Stability: Seven Principles', *Journal of International Economic Law*, Vol. 13, No. 3, September 2010, pp. 597-621) and a recent paper with Charles Goodhart, ("Populism and Central Bank Independence", *Open Economies Review* (2017).

2. ACCOUNTABILITY, LEGITIMACY AND TRANSPARENCY

2.1. Accountability

Accountability can be defined as an obligation owed by one person (the accountable) to another (the accountee) according to which the former must give account of, explain and justify his actions or decisions against criteria of some kind, and take responsibility for any fault or damage.² Four elements are at the core of this definition³: (1) the accountable, (2) the accountee, (3) the content of the obligation and (4) the criteria of assessment.

- 1) A holder of power (the 'accountable'). Accountability presupposes that a person is in a position to make decisions that are likely to have an impact on others and to implement those decisions. Accountability is often categorised with reference to 'the accountable'. We speak of individual accountability, ministerial accountability, **central bank accountability**, corporate accountability and market accountability.
- 2) An authority to whom accountability is owed (the 'accountee'). Who guards the guardians? Accountability as an obligation must be owed to another party. The latter becomes by virtue of this obligation in a position of authority *vis-à-vis* the accountable.⁴ There are various types of accountability according to the authority that exacts it. In the context of central banking, we speak of **parliamentary accountability** (or accountability to parliament), of executive accountability (to the government for delivering the targets, like the letters to the Chancellor the Governor by the Bank of England, further discussed below) of judicial accountability (or accountability to the judiciary), of audit control, exercised by an audit office (like the National Audit Office in the UK) or court of auditors; and of accountability to the public to refer to the general public as the accountee.
- 3) The content of the obligation. A distinction is often made between 'explanatory accountability' where the obligation is to answer questions, to give account of action, and 'amendatory accountability' where there is an obligation to make amends and grant redress.⁵ With regard to monetary policy central bank accountability is typically explanatory.⁶

² This usage is borrowed from Oliver (1994). According to Bank for International Settlements (2009), accountability encompasses three main characteristics: (i) scrutiny by others; (ii) regular accounting for one's actions; and (iii) the risk of negative repercussions, if performance is considered unsatisfactory. Bovens (2007) defines 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".

³ Based on Lastra and Shams (2001).

⁴ In its *Codes of Good Practice on Transparency* (Section IV), the IMF (2000) argues that "Officials of the central bank should be available to appear before a designated public authority to report on the conduct of monetary policy, explain the policy objective(s) of their institution, describe their performance in achieving their objective(s), and as appropriate, exchange views on the state of the economy and the financial system." This approach is in line with the aims set out by the UK [House of Commons] Treasury Committee (1997) which examined how it might best hold the Monetary Policy Committee to account and concluded that: "... by bringing information into the public domain we can help clarify the thinking and actions of those responsible for the formulation and delivery of monetary policy and the rigorous scrutiny of the basis for policy decisions will enhance the credibility and effectiveness of the monetary framework as a whole." I was asked to contribute to this report and submitted written evidence to the UK House of Commons at the request of the Treasury Committee regarding its inquiry into the accountability of the Bank of England. The written evidence, "The Parliamentary Accountability of the Bank of England", was ordered by the House of Commons to be printed, 23 October 1997, House of Commons, Session 1997-98, HC 282. In June 2011, I was invited to give oral evidence to the Treasury Committee of the House of Commons, as part of the Committee's inquiry into the accountability of the Bank of England. The report HC 874 (21st report of Session 2010-12) was [published](#) in November 2011.

⁵ Through judicial review and legislative mechanisms, central bank decisions are often protected by judicial deference and/or immunity. Many central banks have immunity from liability in damages in carrying out their functions provided that they are acting in good faith (see Section 244 of the Banking Act 2009 for the Bank of England).

⁶ Arguably, a significant conceptual reform to a monetary policy framework (such as that recently announced by the US Federal Reserve) could warrant some degree of amendatory accountability insofar as such shift signifies a departure from baseline monetary policy strategies or goals. Chairman Powell [presented](#) in August 2020 a revised Statement on Longer-Run Goals and Monetary Policy Strategy at See: Federal Reserve [press release](#): "On price stability, the FOMC adjusted its strategy for achieving its longer-run inflation goal of 2 percent by noting that it "seeks to achieve inflation that averages 2 percent over time." To this end, the revised statement states that "following periods

- 4) Criteria of assessment. Any form of accountability presupposes that there are objectives or standards according to which an action or decision might be assessed. In other words, accountability implies an obligation to comply with certain standards in the exercise of power or to achieve specific goals. The more complex the activity, the more difficult it is to establish clear standards of conduct and specific outcomes. In which case accountability becomes ever more difficult. The more specific the goals and standards the more effective the accountability. This might induce the 'accountees' to resort to economic or other measurable criteria of performance (hence the term 'performance accountability'). A further twist to understand the notion of accountability is the distinction between *ex ante* and *ex post* accountability. Accountability can either be exercised before/during the process of taking the decision/action, or after the decision/action has been taken. It is with reference to this fact, the fact of concluding a decision or action, that we define accountability as either *a priori* (*ex ante*) or *a posteriori* (*ex post*).

An example of ***ex ante*** accountability is where the 'accountee' becomes involved in the process of choosing the holders of power, or where the consent of 'the accountee' is required for the decision of 'the accountable' to be final. For instance, the appointment procedures of central bank officials, when such procedures require parliamentary approval, (as in the US), and the parliamentary debate of inflation targets (if such a parliamentary debate is required) can be regarded as ways of exercising accountability *ex ante*.⁷ The reporting requirements and the appearances of the central bank chairman or governor in front of parliamentary committees (such as ECON) are ways of exercising accountability through control or ***ex post***.⁸

Lawyers and economists tend to give emphasis to different issues when they try to articulate the accountability of independent central banks. Lawyers emphasise the political and institutional dimension, i.e., the placing of the institution (the independent central bank) within the existing system of checks and balances, in relation to the three branches of the State - legislative, executive and judiciary (the question of who guards the guardians). Lawyers emphasise 'input accountability'.⁹

Accountability should be 'diversified' to include parliamentary accountability (the key source of accountability in a representative democracy), judicial review of the central bank's acts and decisions, audit control, and a degree of co-operation with the executive to ensure consistent overall policy making. "Parliamentary accountability should be exercised through a variety of procedures and

when inflation has been running persistently below 2 percent, appropriate monetary policy will likely aim to achieve inflation moderately above 2 percent for some time."

⁷ At least where appointments are concerned, political actors can use this kind of vetting-accountability to ascertain conceptual or methodological alignment with the appointee—and thus, implicitly, some manner of *de facto* control in the future.

According to Article 11 ESCB Statute, the ECB Executive Board members are appointed at European level; the European Council is also the depository of a democratic mandate, from the Member State governments and the European Parliament – as well as the ECB Governing Council – gives an opinion on the appointments.

⁸ Based on Lastra and Shams (2001). Hüpkes et al. (2005) provide a table (Table 2) mapping possible accountability arrangements for financial sector supervisors (comprising central banks endowed with supervisory responsibilities and other authorities), according to content and form, and whether it is *ex ante* (explanatory) or *ex post* (amendatory). In terms of accountability to the legislative branch they include: Regular report (annual) to assembly or committee; Ad hoc questioning and oral presentations, Ad hoc presentations of proposals for new laws; Presentation of budgetary outcome and Audit report (a mix of *ex ante* and *ex post* mechanisms). In terms of accountability to the executive branch, they include: Regular report to minister of finance or government; ad hoc formal presentations, information on sectorial developments and Proposals for new government regulations/ decrees (a mix of *ex ante* and *ex post* mechanisms). In terms of accountability to the judicial branch (by definition *ex post*) they include judicial review and supervisory liability for faulty supervision. In terms of accountability to the market or supervised industry they include consultations on new regulations and Regulatory impact analysis and cost-benefit assessments (a mix of *ex ante* and *ex post* mechanisms). In terms of accountability to customers and the public at large they include: Mission statement; Information on regulatory and supervisory practices on the website, annual reports, press conferences and public statements of representatives of the RSAs and Consumer education and Ombudsman schemes and consumer grievance board (a mix of *ex ante* and *ex post* mechanisms).

⁹ For a discussion of 'input' and 'output' accountability see Lastra and Garicano (2010), above note.

mechanisms, including annual reports and appearances in front of parliament of public officials on a regular basis, and also in the case of an emergency situation.

Judicial review of the agency's actions and decisions (conducted by an independent and depoliticised judiciary) is essential to prevent and control the arbitrary and unreasonable exercise of discretionary powers. This is a fundamental element of the rule of law. The discretion of public officials should never be unfettered but subject to legal control."¹⁰

Audit control provides financial accountability. The necessary cooperation with the executive remains a most contentious issue in the design of accountability arrangements. The balance between independence and accountability varies across jurisdictions, depending upon the particular economic and political circumstances, legal traditions, institutional frameworks and constitutional requirements.

Accountability requires mechanisms that ensure that those involved in the decision making process explain the actual decisions and the process leading to them.

Economists, while accepting the 'institutional' articulation of accountability according to the *trias politica* (separation of powers) and, in particular, parliamentary accountability, tend to give emphasis to performance accountability and disclosure (both can be regarded as 'output' accountability). Disclosure or transparency can be viewed as a 'market-based' form of accountability. For instance, with regard to the transparency required in the monetary policy decisions taken by an independent central bank, the minutes of the Federal Open Market Committee (in the US) or of the Monetary Policy Committee of the Bank of England must be published. The ECB publishes the monetary policy accounts four weeks after a monetary policy decision is announced.

"Performance control (the question of how accountability is to be achieved) is (...) conditional upon the objectives and targets imposed upon the agency (for example, upon the central bank). Performance control is facilitated first by the existence of one rather than multiple goals or by their unambiguous ranking and, secondly, by the existence of a clearly stated and narrowly defined goal."¹¹

The support of public opinion is another form of *de facto* accountability which finds echo in the media, in an independent press (the 'court of public opinion'),¹² though some segments of the media are either politicised or subject to ideological constraints (or 'fake news'). The support of public opinion - as further discussed below from the perspective of societal legitimacy - is important.

In a representative parliamentary democracy voters can trigger legislative amendments (one statute may be removed by another) or question the integration process (as Brexit has indeed done).

"Independence and accountability can be seen as opposite ends of a continuum. While too much independence may lead to the creation of a democratically unacceptable 'state within the state', too much accountability threatens the effectiveness of independence, and in some instances (particularly

¹⁰ Lastra and Shams (2001). That the ECB is subject to judicial control by the Court of Justice of the European Union (CJEU) is uncontested. The ECB's decisions and the acts preparatory to them can only be challenged in front of the CJEU according to Article 263 TFEU and Article 35 of the Statute of the ESCB, which gives exclusive jurisdiction to the CJEU to review the legality of the ECB's acts and decisions. However, in the USA, monetary policy decisions are thought not to be justiciable (though supervisory and other decisions are). The authority for the non-justiciability of monetary policy decisions dates back to *Raichle v Federal Reserve Bank of New York*, 34 F.2d 910 (2d Cir. 1929):

"It would be an unthinkable burden upon any banking system if its open market sales and discount rates were to be subject to judicial review. Indeed, the correction of discount rates by judicial decree seems almost grotesque, when we remember that conditions in the money market often change from hour to hour, and the disease would ordinarily be over long before a judicial diagnosis could be made."

Judicial decisions in the UK have shown deference towards the discretion of the Bank of England.

¹¹ Lastra and Shams (2001).

¹² Paul Tucker (2018) talks about "360-degree democracy as watchfulness" in Chapters 9 and 10.

in the case of the exercise of a government override) may actually nullify independence.”¹³ There is also the issue of efficiency and coordination in economic policy making as COVID-19 clearly evidences.

The debate about independence and accountability resembles, the philosophical debate about freedom and responsibility: independence without accountability would be like freedom without responsibility.

2.2. Legitimacy

The question of legitimacy pre-exists and is a prerequisite of accountability. The creation of an independent central bank must therefore be the fruit of a democratic act (an act of the legislator like in the case of the Bank of England, a constitutional decision, or a treaty provision like in the case of the ECB). This first source of legitimisation is fundamental in a democratic society. However, while this legal basis legitimises the establishment of the independent agency, it cannot by itself legitimise on a continuous basis the exercise of the powers delegated to such agency. It is then in the continuing life of that entity that accountability becomes necessary to ensure legitimacy: accountability is thus the process of bringing back (by giving account, explaining, justifying, or taking measures of amendment or redress) an independent entity to the procedures and processes of a democratic society.¹⁴

However, accountability also encompasses other ‘technical’ elements that are not related to the ‘political’ legitimacy of the institution, such as performance control. Accountability per se does not politicise a central bank. Conversely, while accountability is needed to ensure ongoing democratic legitimacy, legitimacy has two aspects: a formal, normative one which refers to legality of the political system and a societal or empirical one, which is determined by the acceptance of or loyalty to the system.¹⁵

The legitimacy of independent institutions may be understood by reference to the ‘Robinson Crusoe’ paradigm. Just as an individual—recognising his own imperfection in the face of possible temptations—imposes constraints upon himself, “in order to channel his own expedient behaviour towards rationally selected norms”,¹⁶ a government, recognising its own weakness in the face of temptations, limits itself by allowing or creating autonomous or independent bodies. This willingness to submit itself to restrictions provides a degree of democratic legitimacy.

“Central banks are not majoritarian, democratic institutions.¹⁷ Central banks are, instead, technocratic bureaucracies, staffed by career employees and, typically, a few leaders who have been appointed by the political authorities.”¹⁸ “Central banks do not only administer a technical regulatory scheme affecting discrete industries or interests. In their core monetary policy role they regulate price levels,

¹³ Lastra and Shams (2001).

¹⁴ de Boer and van 't Klooster (2020) (cited with permission by the authors), advocate a revision of the key treaty provisions to improve the legitimacy of the ECB (activating Article 40 of the ESCB Statute) and argue that “procedural arguments always had a role in providing central bank independence with legitimacy”. They contemplate the role of judicial review, whether the courts do “too little” or “too much” and further argue that the CJEU and the German Constitutional Court adopt different approaches in their judicial review post Weiss. While the CJEU defers to the ECB “as long as it pursues the objective of price stability”, the German Constitutional Court (GCC) insists on stricter scrutiny and demands “that the central bank weighs the economic policy effects of its monetary policies” and approaches the issue “through the lens of proportionality”. The GCC “requires the ECB to explain and justify how it has taken into account the potential negative effects of its monetary policies”. They note, however, that “judicial review does not solve the problem of democratic legitimacy”.

¹⁵ See Verhoeven (2002). Charles Goodhart and myself (Lastra and Goodhart, 2017) wrote: “Legitimacy in turn is rooted in the concept of sovereignty.(...) Of course, societal legitimacy can be fickle since public acceptance is also influenced by politics, the media, current events, changes in circumstances, sentiment, and other factors. In any case, when societal legitimacy weakens or is no longer present, the law is bound to change.”

¹⁶ See Buchanan (1975).

¹⁷ See Lastra and Miller (2001), above note. See also Majone (1994).

¹⁸ For discussion in the American context, see e.g. Lawson (1994); Miller (1986); Strauss (1984); ‘Symposium, Administering the Administrative State’ (1990) 57 University of Chicago Law Review 331; ‘A Symposium on Administrative Law: The Uneasy Constitutional Status of Administrative Agencies’ (1987) 36 American University Law Review 277.

which is one of the most fundamental powers of government, and one of the most important practical concerns of the public at large.”¹⁹

“The case for central bank independence can be reconciled, in general, with the theory of democratic self-determination. An analogy to the independent judiciary may be useful in this respect.²⁰ Like central banks, the judiciary administers the nation’s laws going to the core of a nation’s political identity. And like central bankers, judges, in general, are not popularly elected in liberal democracies.”²¹ The theory of judicial legitimacy is better developed than the theory of central bank legitimacy, so it is enlightening to turn to this analogy for instruction.

2.3. Transparency

“Prior to the 1980’s, transparency was hardly discussed in academic and policy literature.” “This inevitably begs the question of *why* the recent concern with transparency. Transparency is an essential feature of governance in a market economy.” “[The] link between transparency and the market is further illustrated by the increased emphasis on transparency in the 1990’s following the collapse of the Soviet Union and the global trend towards a market economy.”²² Dhonte and Kapur have pointed out that “a market system pre-ordains the rule of law by ensuring three basic conditions: free entry to markets, *access to information*, and the objective sanctity of contracts.”²³

“Any recent discussion of accountability often includes a reference to transparency and vice versa. This poses the question of the relationship between the two concepts.” “Accountability is an obligation to give account of, explain and justify one’s actions, while transparency is the degree to which information on such actions is available. The provision of information is clearly an element of accountability.”²⁴ However, the provision of information is hardly ever a neutral account of what happened or of what is happening; hence, the need for an explanation or justification of the agency’s actions or decisions (i.e., accountability). Thus, accountability must involve defending the action, policy or decision for which the accountable is being held to account.

The provision of information in the context of accountability, whether in an *ex ante* investigation or an *ex post* requirement of disclosure, facilitates transparency. On the other hand, a transparent economic and political environment enhances the effectiveness of accountability. The two concepts are therefore mutually enforcing, and they both share the provision of information as a common requirement.

Notwithstanding the benefits of transparency in the area of monetary policy, with regard to supervision²⁵ (and resolution) the disclosure of some sensitive decisions can end up generating a panic. Accordingly, certain supervisory decisions require a degree of confidentiality given the psychological connotations of bank panic and contagion;²⁶ another reason for confidentiality is the need to facilitate

¹⁹ Above note Lastra and Miller (2001).

²⁰ Goodhart and Meade (2004) have also written a paper on this.

²¹ Lastra (2010).

²² Lastra and Shams (2001).

²³ Dhonte and Kapur (1997).

²⁴ Lastra and Shams (2001). According to the Scott Report [Inquiry into exports of defense related equipment and dual use of goods to Iraq and related prosecution HC 115 I (1995-96) cited in H. Fenwick & G. Philipson, *Sourcebook on Public Law* (London 1997), ¶ D4.58]: “The importance (...) of the provision of full and adequate information is, in my opinion, self evident, whether in answering parliamentary questions or in debate or to a select committee. Withholding information on the matter under review, it is not a full account, and the obligation to account for what has happened or for what is being done has prima facie not been discharged. *Without the provision of full information, it is not possible for parliament, or for that matter the public, to hold the executive fully to account.*” (emphasis added)

²⁵ It should be noted that there have also been some moves to transparency in supervision, such as stress testing.

²⁶ The need for covert assistance in the case of lender of last resort operations is of particular importance to contain a crisis, since the belief in a panic is self-fulfilling and the fact that an institution is known to require official assistance may trigger the very run the authorities are keen to prevent, and thus “stigmatise” the provision of such assistance.

candid information sharing between the supervisor and the supervisee and also to facilitate sharing between supervisors.²⁷ In any case, the main focus of this paper concerns monetary policy accountability and not supervisory accountability. It is in the realm of transparency where significant developments have taken place over the last two decades. Some 'new paradigms' of accountability - such as consultations with consumers, industry groups, or the public in general, or proportionality assessments - contribute to transparency, though they must be channelled through adequate institutional mechanisms. I will return to this adequate channelling when discussing the accountability of the ECB.

²⁷ See also the recent [CJEU case of Baumeister](#).

3. THE BANK OF ENGLAND

Over the last two decades, the Bank of England has undergone a number of reforms and structural changes impacting upon its objectives, functions, and internal organization.²⁸ The Bank's powers have been significantly expanded in particular in the aftermath of the GFC. With expanded powers comes enhanced accountability.²⁹

Today, the Bank of England is the micro and macro prudential supervisor, the financial markets infrastructure regulator and the resolution authority in addition to its traditional monetary policy and other central banking responsibilities (such as note issue, bankers' bank and lender of last resort). The current mandate of the Bank, encompassing both price stability and financial stability, is reflected in its organisational structure, with the Monetary Policy Committee (MPC) established in 1998 and the Financial Policy Committee established in 2013.³⁰

It is important to bear in mind that all reforms were adopted on the premise that "a transparent, accountable and well-governed central bank is essential not only for effective policy, but also for democratic legitimacy".³¹

3.1. The Bank of England Act 1998

The Bank of England was given operational independence in the conduct of a price stability oriented monetary policy with the passage of the Bank of England Act 1998.³² The Bank's independence is 'instrumental' and could be repealed through ordinary legislation. There is no specific 'declaration of independence' protecting the Bank of England from political interference.³³

Accountability is exercised via a number of formal and informal mechanisms, including parliamentary scrutiny, with the Governor and other Bank officials being called to testify in the front of the Treasury Committee (TSC), and reporting requirements, such as the obligation to publish the minutes of the meetings of the Monetary Policy Committee and the publication of the Bank's Inflation Reports on a quarterly basis (which inform also the questions posed to the Governor by the TSC).

As Salib and Skinner explain, monetary policy in the UK is conducted as follows:

- 1) Parliament sets the Bank the goal of maintaining price stability;

²⁸ The Bank was in private hands for the first 252 years of its existence and then nationalised with its capital stock transferred to HM Treasury in 1946; see [Bank of England Act 1946](#), 9 & 10 Geo. 6 c. 27, § 1(1) (UK). The shares are held by the Treasury Solicitor on behalf of HM Treasury. See "[Who Owns the Bank of England?](#)".

²⁹ See generally Tucker (2018), *passim*. Tucker explains how the regulatory state need not be a fourth branch of government free to steer by its own lights, and how central bankers can emulate the best of judicial self-restraint and become models of dispersed power.

Briault, Haldane and King (1996) created an accountability index based on four criteria: a) Whether the central bank is subject to external monitoring by Parliament; b) Whether the minutes of the meetings in which monetary policy is decided are published; c) Whether the central bank publishes an inflation or monetary policy report in addition to the standard central banks bulletins and d) Whether there is a clause that allows the government to override a decision by the central bank.

³⁰ See UK Government (2016), stating that "*The Financial Services Act 2012 dismantled the failed tripartite system, putting the Bank of England at the centre of a new framework of financial regulation*".

³¹ See Bank of England (2014).

³² In the 1990s a broad consensus emerged in relation to the economic benefits arising from granting central banks instrument independence over monetary policy. See Lastra (1992) and Lastra (1996), chapter 1. A distinction was made between goal independence, referring to the central bank being free to set its monetary policy goals, and instrument independence, referring to the central bank being free to choose the means by which it achieves its goals. See Debelle and Fischer (1994). See also Balls et al. (2016).

³³ Although this is made unlikely by non-legal reasons, since - as Salib and Skinner (2019) point out - independence gives the central bank credibility and market confidence in the pursuit of its objectives. They emphasise that there is "*no oath that its political masters must swear requiring them to respect central bank independence*" and recall (id, 913) the words of Chancellor Lawson saying that "*there would be a powerful market sanction against that: the mere announcement of the intention to do so would in itself be so damaging to market confidence that any Government would be extremely reluctant to attempt it*".

- 2) Parliament empowers HM Treasury to define this on an annual basis;
- 3) The Bank has operational independence in setting policy to achieve price stability (and is accountable to HM Treasury and Parliament for doing so);
- 4) Yet this operational independence is not immutable and can be overridden by HM Treasury in extreme economic circumstances; but
- 5) Should HM Treasury wish to do so, it can only do so transparently and with the approval of Parliament.

Parliament empowers HM Treasury to elaborate on the Bank's statutory objectives. In practice, this takes the form of letters from the Chancellor to the statutory committees, which are issued and published on a regular basis. As one would expect, the scope of the letter varies depending on the committee. "The Chancellor's remit to the MPC, which must be issued at least once every twelve months, defines price stability (an inflation target) and specifies the economic policy of the government. Since 1997, the remits have required an exchange of 'open letters' between the Governor and the Chancellor if inflation moves away from the target by more than 1% in either direction".³⁴

The fact that the MPC has external members to avoid groupthink also facilitates accountability.

In 2011, the TSC published a report (following an extensive inquiry) into the accountability of the Bank of England.³⁵ The TSC recommended inter alia a clarification of the lines of accountability between the Chancellor, Her Majesty's Treasury (HMT) and the Bank of England at times of financial difficulty, and generally that the Bank should be more open about its work and must be held to account more clearly than in the past. The response to the Report by the Court of the Bank was published on 23 January 2012, together with a short Report by the Committee.³⁶ The Court suggested that it was indeed in the public interest that the new legislation would provide a long term framework for the accountability of the Bank of England, which would increase, not diminish the authority of the Bank of England.

3.2. The Financial Services Act 2012 and post-crisis reforms

The Financial Services Act 2012 – a legislative response to the GFC of 2007-2009 – gave the Bank of England responsibility for overseeing the UK financial system as a whole. The Act established the Financial Policy Committee (FPC) and the Prudential Regulation Authority (PRA). The PRA was set up (at the outset) as a subsidiary of the Bank.

With expanded responsibilities "comes the need for effective transparency, genuine accountability and robust governance arrangements".³⁷

In 2014, the Bank of England proposed a series of changes aimed at reinforcing its transparency, accountability and governance, some in response to the Warsh Report.³⁸ With a view to strengthening the ability of the Parliament and the public to hold the Bank accountable for its actions, the 2014 changes were as follows:

³⁴ See Salib and Skinner (2019).

³⁵ The [report](#) was published on 8 November 2011.

³⁶ UK [House of Commons] Treasury Committee (2012).

³⁷ See Bank of England (2014). See also the [Governor's introduction](#) of the Warsh report and the Bank's response to it at.

³⁸ See review by Kevin Warsh (2014). Warsh (a former Governor of the Federal Reserve System) identified four distinct objectives of monetary policy transparency (1. sound policy, 2. effective communication, 3. public accountability and 4. accurate historical record-keeping), and made recommendations with respect to each of them.

- 1) Improvements to Monetary Policy Committee transparency (MPC) by publishing in part a transcript of the MPC meetings (though the minutes with votes were published since 1997) and publication of the minutes of Court meetings;
- 2) The simplification of the governance and structure of the Bank's Court of Directors (which turned back into a unitary body); and
- 3) The alignment of the status of the FPC and the PRA Board with that of the MPC.³⁹

3.2.1. Transparency

With regard to MPC transparency, the Bank decided to publish, with an appropriate delay (*i.e.* 8 years), the transcripts of that part of its meeting at which policy is decided and the Inflation Report⁴⁰ (though, as I have already mentioned, the minutes with votes were published since 1997).

Concerning the interaction between the MPC and FPC, both committees considered it appropriate to enhance such interaction by scheduling four joint meetings per year.⁴¹ It is important to emphasise that though the minutes of the MPC and the minutes of the FPC routinely are published, the PRC meetings are never published, for the reasons discussed above as regards the need for confidentiality to avoid bank runs and panics.

MPC minority votes help focus public debate and oversight by the TSC. The FPC never has any minority votes. Some argue that this is not a commendable practice, while others hold that consensus decision making is important on financial stability issues, that the institution should speak with one voice and that financial stability decisions do not lend themselves to yes/no votes.

Since April 2013, the Bank has published the minutes of its Court meetings six weeks after the meeting to which they relate, or, if there is no further meeting within that period, then two weeks after the date of the next Court meeting. Yet, pursuant to the 1998 Act, the Court may decide to omit information from its published record in the public interest as well as information which is legally sensitive or commercially confidential.⁴² With a view to enabling the Parliament, through its Treasury Committee, to hold the Bank to account, the latter – after sustained pressure from TSC – decided to publish also the minutes of the historical court meetings. The 2007-2008 court minutes were in fact published at the time of the transparency report in 2014.

3.2.2. Governance of the Bank

The Bank proposed to simplify its governance structure on the grounds that direction and oversight were divided between two statutory boards, *i.e.* the Court and the Oversight Committee, whose functions overlapped. The Bank believed that a single unitary board could be more effective both in managing the Bank and in delivering a more convincing framework for accountability.⁴³

The Independent Evaluation Office (IEO) was established in 2014 to assess the Bank of England's performance and, as a result, to "increase public trust in the Bank and to improve its openness, learning culture and public accountability. The IEO is an independent unit that sits within the Bank. It operates at arm's length from other areas so as not to compromise the independence of the Bank's policy

³⁹ *Id.*, 1, also stating that these changes were expected 'to enhance the Bank's ability to fulfil its mission to promote the good of the people of the United Kingdom by maintaining monetary and financial stability'.

⁴⁰ See Bank of England (2014), 2.

⁴¹ *Id.*, 3.

⁴² *Id.*, 4, also underlining that 'these passages are omitted from the published minutes, but are still transferred to the Bank's Archive, for eventual release in line with the Bank's archive policy for Court minutes'.

⁴³ *Id.*, 4-5.

making. The Court of Directors has a statutory obligation to keep the Bank's performance under review, and the IEO supports this through its in-depth evaluations. When necessary, the IEO also supports reviews carried out by independent third parties. The IEO reports directly to the Chair of Court, who sets the IEO's remit and work programme, typically in consultation with other Court Directors."⁴⁴

3.2.3. The Policy Committees

The MPC was already a Committee of the Bank operating under objectives set in legislation (according to the 1998 Act) so as "to maintain price stability and, subject to that, to support the economic policy of Her Majesty's Government, including its objectives for growth and employment."⁴⁵ Such a structure was considered particularly effective and therefore it was suggested that the FPC and Prudential Regulation Committee (PRC) should also adopt the same structure.

HMT effectively issues three remit letters, one to each of the three policy committees.⁴⁶ They are slightly different with the PRC one much less frequent (once a Parliament) but essentially allowing HMT to set out its economic policy and issue the Bank of England should have regard to.

3.3. The Bank of England and Financial Services Act 2016

The changes proposed by the Bank of England which needed a legislative reform to effect have been implemented through the Bank of England and Financial Services Act 2016. For the purposes of accountability and independence, the most relevant elements of the 2016 Act are the following:

- 1) Improvement of the accountability and governance of the Bank by making its Court of Directors a smaller, more focused unitary board;
- 2) Moving the MPC to a schedule of a minimum of 8 meetings a year;
- 3) Finalisation of the Governor's 'One Bank' reforms by bringing the PRA within the Bank, ending its status as a subsidiary, and establishing a new PRC;
- 4) Changes to the FPC, by making it a statutory committee of the Bank, in line with the MPC and the new PRC;
- 5) Appointment of a new Deputy Governor for Banking and Markets in legislation, adding the position to the Court of Directors and the FPC. This can be criticised however, on the basis that no other than the Governor covers the whole Bank, since four Deputy Governors can be considered like 'Department Heads' (or like the four executive directors that existed for decades and decades);
- 6) Bringing the Bank within the purview of National Audit Office (NAO) value for money studies, improving transparency and accountability for its use of resources; and
- 7) Further coordination arrangements between the Treasury and the Bank in protecting taxpayers and the wider economy from bank failures.

⁴⁴ It is worth noting that one of the IEO reports relates to monetary policy forecasting available at <https://www.bankofengland.co.uk/independent-evaluation-office>.

The IEO of the Bank of England is similar in nature to the [IMF IEO](#) which was established by the IMF Executive Board in July 2001 to provide objective and independent evaluation on issues related to the IMF.

⁴⁵ Bank of England (2014), Id., 5.

⁴⁶ As noted above, Salib and Skinner (2019), op cit. 922: "*Parliament empowers HM Treasury to elaborate on the Bank's statutory objectives. In practice, this takes the form of letters from the Chancellor to the statutory committees, which are issued and published on a regular basis. As one would expect, the scope of the letter varies depending on the committee.*" "*The Chancellor's remit to the MPC, which must be issued at least once every twelve months, defines price stability (an inflation target) and specifies the economic policy of the government. Since 1997, the remits have required an exchange of "open letters" between the Governor and the Chancellor if inflation moves away from the target by more than 1% in either direction.*"

The Bank of England and Financial Services Act 2016⁴⁷ is the last major milestone in this far reaching series of reforms. This 2016 Act strengthened the governance and accountability of the Bank, by ending the subsidiary status of the PRA and allowing the NAO to undertake value for money reviews of the Bank for the first time. With these reforms Bank of England aspired to continue to be an international example of best practice. The Bank of England's website summarises some of these arrangements.⁴⁸

3.4. The role of the National Audit Office and the MoU with the Bank of England

Audit control provides a basis and input for subsequent parliamentary scrutiny, as long as it is strong, accurate and independent.

Following the Bank's 'transparency and accountability' report of 2014⁴⁹, the 2016 Act⁵⁰ made the Bank subject to the NAO. NAO 'value for money' reviewed for the first time (albeit with important exceptions around policy decisions) the BoE relationship with the NAO⁵¹, which was articulated in a carefully negotiated Memorandum of Understanding (MOU) between the Bank of England and the NAO⁵² with the aim to enable the latter to conduct "examinations into the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions".

"The Comptroller and Auditor General, as head of the NAO, helps Parliament to hold to account those responsible for the use of public resources. In order to perform this function effectively, the Comptroller has wide-ranging powers within a statutory framework that enshrines his independence and ability to exercise discretion in the choice and conduct

⁴⁷ UK Government (2016).

It also included other measures to ensure that senior managers across the financial services industry can be held to account for failings that occur on their watch, through the extension of the Senior Managers and Certification regime to all authorised persons. Though this last measure is not relevant for central bank accountability, it should be noted that the Bank of England has said publicly that it applies the principles of the senior managers regime to its own officials and published an associated "responsibilities map".

⁴⁸ See <https://www.bankofengland.co.uk/knowledgebank/how-is-the-bank-of-england-independent-of-the-government> and <https://www.bankofengland.co.uk/about/governance-and-funding>: The Bank of England is a public body that must answer to the people of the UK through Parliament. The Bank answers to Parliament's [House of Commons Treasury Committee](#) publicly holds the Bank to account. It regularly asks the Governor and other senior representatives to explain how and why they arrive at their decisions and asks questions about our approach to [monetary policy](#), [financial stability](#) and [prudential regulation](#). It also questions new members of the three policy committees before they start their role. Find transcripts, reports and videos of these events on the [UK Parliament website](#).

⁴⁹ Bank of England (2014).

⁵⁰ UK Government (2016).

⁵¹ The provisions concerning the Comptroller and the Bank were inserted into the 1998 Act by the Bank of England and Financial Services Act 2016. The relevant statutory provision for NAO accountability is section 6 of the Bank of England Act 1998 which reads as follows:

"7D Examination by Comptroller and Auditor General

(1) The Comptroller and Auditor General ("the Comptroller") may carry out examinations into— (a) the economy, efficiency and effectiveness with which the Bank has used its resources in discharging its functions; (b) the economy, efficiency and effectiveness with which a Bank company has used its resources in discharging its functions. (2) An examination under this section may be limited to such functions (however described) of the Bank or the Bank company as the Comptroller considers appropriate. (3) An examination under this section is not to be concerned with the merits of the Bank's policy objectives. (4) An examination under this section is not to be concerned with the merits of— (a) policy decisions taken by the Financial Policy Committee, the Monetary Policy Committee or the Prudential Regulation Committee; (b) policy decisions taken by a committee or other body within the Bank for the time being having responsibilities for the supervision of payment systems, settlement systems [central securities depositories] or clearing houses, so far as the decisions relate to that supervision. (5) Subject to subsection (6), an examination under this section is not to be concerned with the merits of policy decisions taken by a committee or other body within the Bank for the time being having responsibilities for the exercise of any of the Bank's resolution functions, so far as the decisions relate to those functions. (6) Where the Bank has exercised relevant resolution functions in relation to a financial institution, subsection (5) does not prevent an examination under this section being concerned with the merits of policy decisions within that subsection which are relevant to the Bank's exercise of its resolution functions in relation to that institution (whether or not those policy decisions are also relevant to other financial institutions). (7) "Relevant resolution functions" are (...) (8) Before carrying out an examination under this section, the Comptroller must consult the court of directors of the Bank. (9) The Comptroller may report to the House of Commons the results of any examination carried out by the Comptroller under this section. (10) For the purposes of this section (...) (11) Section 6 of the National Audit Act 1983 (Comptroller may carry out economy, efficiency and effectiveness examinations) does not apply to the Bank or a Bank company."

⁵² See Memorandum of Understanding between the National Audit Office and the Bank of England.

of his work'.⁵³ 'While the Comptroller will not examine the merits of policy objectives or the merits of policy decisions of the relevant committees (including advice on which decisions on individual cases are based), the Comptroller may examine the efficiency and effectiveness with which the Bank uses its resources to discharge its functions including whether the capability maintained by the Bank to support those policy processes is appropriate'.⁵⁴

The NAO has done a report into the Bank's central services⁵⁵ to which the Bank responded⁵⁶ raising criticisms of the Bank that were picked up in the press.⁵⁷ Also because of the NAO angle – in terms of parliamentary scrutiny it was the Public Accounts Committee (PAC) that took responsibility – it was probably the first time Bank officials went before the PAC (the Treasury Committee is the usual avenue of parliamentary accountability).

Both the NAO and the IEO provide input for subsequent parliamentary scrutiny.⁵⁸

3.5. The design of parliamentary accountability – the Treasury Committee of the House of Commons

The expansion of the powers of the Bank of England leads inevitably to a rethink of the accountability arrangements.⁵⁹ Parliament is regarded as the best institution to play the role of guarding the guardians of monetary and financial stability in a representative democracy.⁶⁰ In practice, a number of issues arise for parliamentary scrutiny to function effectively. To begin since monetary and banking issues are highly specialised matters, such scrutiny should be exercised by a specialised parliamentary committee.⁶¹

The Treasury Committee (often referred to as the Treasury Select Committee or TSC) is appointed by the House of Commons (HC) to examine HM Treasury, HM Revenue and Customs, the Bank of England and the Financial Conduct Authority (FCA),⁶² while the House of Lords Economic Affairs Committee (EAC) also exercises its own power to hold hearings with HMT and the Bank.

⁵³ Id., 2.

⁵⁴ Id., 3.

⁵⁵ National Audit Office: "[Managing the Bank of England's Central Services](#)".

⁵⁶ Bank of England: "[Bank of England press statement on NAO Report](#)".

⁵⁷ Financial Times (19 December 2018): "[Spending watchdog criticises Bank of England's 800 empty desks](#)"; BBC (19 December 2018): "[Bank of England rebuked over £5m in unchecked spending](#)".

⁵⁸ As stated above, since 2014 the Bank of England has its own Independent Evaluation Office (IEO). In July 2019, for example, the Court commissioned the IEO to carry out an in-depth evaluation of the Bank's Asset Purchase Programme.

⁵⁹ "With power comes responsibility". As they say, *Quis custodiet ipsos custodes?*, Lastra (2011), 20, "Lord Acton's dictum resonates in the background of the corridors of power, as a key reminder of the importance of accountability".

⁶⁰ See Lastra, *Accountability of the Bank of England*. First Report. House of Commons – Treasury Committee, Session 1997-1998, London, 27 October 1997, 28, clearly saying that "in a democracy, an independent central bank needs to be accountable to the elected representatives of the will of the people, i.e. to Parliament".

⁶¹ Andrew Tyrie, former chairman of the TSC, argued in his 2015 book that "Select Committees are now much more effective scrutineers and investigators than they were even five years ago" (Tyrie, 2015: 33). This surely had to do – when he wrote these lines – with his own strong chairmanship and knowledge of the subject matter.

⁶² Tucker, above note, at p. 368, recalls how the UK government historically was accountable "on the Floor of the House" and how the emergence of powerful House of Commons select committees in the early 1980s has been an 'important constitutional evolution'. And since 2010, the chairs of those committees are elected by the House of Commons rather than party managers. Tucker reflects upon this development and concludes that "it would be no exaggeration to say that the growth of the UK's regulatory state and of the standing of parliamentary committees has been symbiotic".

The Treasury Committee chooses its own subjects of inquiry. Depending on the subject, external deadlines, and the amount of oral evidence the Committee decides to take, an inquiry may last for several months and give rise to a report to the House; other inquiries may simply consist of a single day's oral evidence which the Committee may publish without making a report. When the Committee has chosen an inquiry it normally issues a press notice outlining the main themes of inquiry and inviting interested parties to submit written evidence. It may also identify possible witnesses and issue specific invitations to them to submit written evidence. The House has given

The Treasury Committee of the House of Commons is a multi-partisan committee made up of 11 members. The members of the Treasury (Select) Committee are elected representatives of the House of Commons appointed by the House of Commons, which also elects the chair of the Committee. Differently from the ECB and the Federal Reserve System, the Bank of England Governor participates to the hearings together with other members of the MPC. While the Treasury Committee has sole statutory authority to scrutinise the BoE, also the Economic Affairs Committee of the House of Lords holds hearings with the Bank of England. It holds regular hearings with MPC members on the Bank of England's Quarterly Inflation Report and with FPC members of the Bank on the Financial Stability Report⁶³. The role of the TSC in the appointment process of the Governor and other senior officials has become more 'muscular' in recent years. For example, the debate around the appointment of Charlotte Hogg as deputy governor (conflicts of interest) is an example of this vetting process since the publication of the TSC report (under the strong chairmanship of Andrew Tyrie) led to her resignation.⁶⁴

The Economic Affairs Committee of the House of Lords is usually made up of thirteen members, appointed by the House for each Session of Parliament. It holds less hearings than TSC. The EAC's main function is to examine matters within its remit with which Parliament ought to be concerned, and to report to the House of Lords with recommendations for government action. Each inquiry leads to a report, published together with the evidence on which it is based, setting out the committee's findings and making recommendations to the Government and others.⁶⁵

Members of the EAC and TSC need to have a good understanding of monetary and financial matters as, otherwise, the control would simply be ineffective. And in order to properly perform this they need time, information and resources.⁶⁶

the Committee the power to send for "persons, papers and records". It therefore has powers to insist upon the attendance of witnesses and the production of papers and other material. These formal powers are rarely used.

⁶³ The TSC established separate hearings for the members of the newly created Financial Policy Committee to discuss the Financial Stability Report. See Fraccaroli et al. (2020).

According to Cheryl Schonhardt-Bailey (2015): *"With respect to the partisan composition of select committees, the membership reflects the proportional partisan balance in the House of Commons, so that a government majority will translate into a majority of members on each of the select committees. The committee chairmanships are, moreover, allocated among the main parties (Conservative, Labour, Liberal Democrat—and, since 2015, SNP), in proportion to the partisan balance in the House. From 2010, they have been elected from the whole membership of the House of Commons. In contrast, committee members are elected by their own party cohorts. An important feature of British select committees is that, in contrast to many legislative committees elsewhere in the world, they do not explicitly consider legislation. Instead, the normal committee stage of the legislative process is left to temporary and non-specialist "public bill committees" (Russell and Benton 2011: 11). Thus select committees do not scrutinize government legislation but rather oversee government departments. In order to effect this oversight, frontbench ministers and opposition spokespersons are usually not members of select committees. Reforms enacted in 2010 have further solidified this independence of select committees (Russell and Benton 2011; Gordon and Street 2012; Kelso 2012) (...). "[D]eliberation must entail a critical review of the decisions of the witnesses giving testimony across all relevant issues"*.

⁶⁴ Financial Times (14 March 2017): ["New BoE deputy governor Charlotte Hogg resigns after damning report"](#).

⁶⁵ Cheryl Schonhardt-Bailey, above note, points out that *"the EAC is a relatively new committee, growing from ad hoc status in 1998 (to monitor the new MPC, as the Blair-Brown Labour Government made the Bank independent) to permanency in 2001"*. She also notes that *"Committees in the House of Lords operate quite differently from those in the House of Commons. Most importantly, Lords committees do not scrutinize government departments in the way that Commons committees do. Instead, Lords committees are more thematically constructed, focusing on four main areas—economics, Europe, science and the UK constitution. And, because individuals typically become peers based on years of experience and excellence in their fields, committees in the upper house typically exploit this expertise in the composition of committee memberships. (For instance, a key member of the Economic Affairs Committee in the 2010-15 Parliament was Nigel Lawson, Baron Lawson of Blaby, who served in the Thatcher Cabinet, ultimately as Chancellor of the Exchequer). Whereas since 2010, members in Commons committees are elected with party groups and chairs are elected in a secret ballot by the whole chamber, members of committees in the Lords are appointed by more traditional means—namely, via the whips. Broadly speaking, investigative committees in the Lords have a reputation for investigating issues that are both "more strategic" and "more technical"—thereby reflecting the expertise of their members (Russell 2013: 210). In a recent comparison of Commons and Lords committees, Russell has described the latter as "less adversarial" in hearings with experts (Russell 2013: 211)"*. Russell (2013) also notes that while the Treasury Committee is officially responsible to hold the BoE accountable for its policy, the Economic Affairs Committee focuses more on issues related to administration, clarification and simplification.

⁶⁶ Cheryl Schonhardt-Bailey (2015), above note: *"While Russell describes the division of responsibility between the TSC and the EAC as 'not necessarily clear,' she maintains that the official role of the former is to cover policy while the latter focuses on 'technical issues of administration, clarification and simplification' (Russell 2013: 216-17). So, while the TSC clearly retains the formal responsibility for economic policy oversight, it is less clear where, exactly, the EAC contributes to the broader rubric of holding the Government to account for economic policy. If, however,*

An efficient mechanism that, in my opinion, could enable MPs to successfully perform this task, would be the creation by the Treasury Committee of a sub-committee with the specific role of monitoring the Bank of England.⁶⁷ Of course this mechanism of control could only work properly if the members of such a sub-committee have “the technical expertise required to deal with monetary matters” and are multi-partisan, on the very assumption that “accountability requires knowledge”.⁶⁸ MPs who are members of the Committee (or sub-committee), are meant to act as a “filter for the house in holding the Bank of England accountable to Parliament”.⁶⁹

In his excellent book, Paul Tucker⁷⁰ compares the MPC in the UK, the Federal Open Market Committee (FOMC) in the US and the Governing Council in the ECB (Chapter 11), linking this comparison to the adequacy of parliamentary oversight committees (Chapter 15). Drawing on his own personal experience, he points out that the strength of the MPC in the UK lies on the exploration of arguments “with fellow experts before voting” (p. 264) and that, on “that basis”, both FOMC and ECB Governing Council “are too large” (p. 265). Committees with one person-one vote help identify the issues where parliamentary oversight committees should ask questions and thus facilitate public debate. While the parliamentary hearings in the US Congressional committees⁷¹ in the case of the Federal Reserve System and ECON in the case of the ECB “are centered on the chair” (Chairman of the Federal Reserve and President of the ECB), in the UK “typically four or five members of the Bank of England policy committee attend a hearing” (p.374). Tucker further points out: “This is not ‘testimony’ in the sense of an occasion for the chair to read out a long essay, which would often be unwelcome as Treasury Committee members (...) want to use the time to ask the Bank about material (e.g., an Inflation Report) that is already in the public domain. To be clear, it is not always comfortable for the central bankers on parade: the ‘hunting the pack’ metaphor can be apposite. But the hearings are invariable occasions when the UK central bankers find an opportunity, if they wish, to raise their own questions and ideas about the regime” (p.374).⁷²

3.6. Relationship with the HMT and ‘override powers’

The relationship between and independent central bank and the executive is always a difficult balancing act in the design of accountable independence. The importance of independence arises from the need to insulate from partisan political influence the pursuit of monetary policy and financial stability.

With regard to monetary policy, the Bank of England is meant to put in place measures with a view to reaching the inflation target set by the Chancellor, which “provides a clear quantifiable indicator”.⁷³ By

Russell’s depiction is correct, an investigation of the content of the hearings for each committee should observe more of a focus on policy in the TSC and a more administrative focus in the EAC.” See also Lastra (2011), 20.

⁶⁷ See Lastra, *Accountability of the Bank of England*. First Report. House of Commons – Treasury Committee, Session 1997-1998, London, 27 October 1997, 28-29, when I was asked to submit written evidence to the House of Commons Treasury Committee with regard to its inquiry into the parliamentary accountability of the Bank of England back in 1997, I advocated that the Treasury Committee could appoint a sub-committee with the specific task of monitoring the Bank of England. The sub-committee should be chaired by an opposition MP.

⁶⁸ See Lastra (2011) also suggesting that this sub-committee should have either three or five members.

⁶⁹ See Lastra, *Accountability of the Bank of England*. First Report. House of Commons – Treasury Committee, Session 1997-1998, London, 27 October 1997, 28, emphasising that the members of the Committee should explain in clear terms to the House whether the Bank has managed to achieve its goals or not.

⁷⁰ Tucker, above note. The point about the size of ECON is in page 299, as part of a discussion of how incentives are structured.

⁷¹ In the US, Monetary Policy Reports (previously referred to as Humphrey-Hawkins reports) require the Federal Reserve to formally report on its activities to Congress. The Chairman of the Board of Governor is called on to offer oral testimony about the report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

⁷² Tucker cites (p. 374) Schonhardt-Bailey’s comparative study on “Monetary Policy Oversight” (fn 41).

⁷³ Id., 21.

contrast, in the area of financial stability the absence of universally accepted specific targets complicates performance accountability.

The relationship between the HMT and the Bank of England is based on cooperation and coordination between the two. “Accordingly, there is a broad suite of formal and informal mechanisms to manage when different views on issues of policy or a course of action to be taken emerge”.⁷⁴

The Bank of England operates in accordance with a statutory framework set by Parliament. Such a framework is designed to ensure that the Bank is free from day-to-day political influence and direction. Still, coordination becomes particularly important in areas placed at the border between fiscal policy, monetary and financial stability.

In this regard, a review on the monetary policy framework conducted by HMT in 2013 “highlighted that the development of new unconventional instruments (such as Quantitative Easing) should include consideration with Government of appropriate governance and accountability arrangements to ensure that the respective objectives of the government and central bank are clear and transparent”.⁷⁵ The need for such fiscal and central bank coordination in relation to such instruments is important because the instruments risk blurring the line between monetary and fiscal responsibilities, as such policies can (1) involve credit risk (which ultimately has implications for the taxpayer as governments back the public sector balance sheet) and (2) influence credit allocation (which raises the question about the appropriate role of central banks in such decisions).⁷⁶

Furthermore, a wide range of supporting coordination mechanisms are in place between HM Treasury and the Bank, both specifically in relation to the three statutory committees and also more generally.⁷⁷

However, in specified circumstances, HM Treasury has a set of backstop legal powers to override—specifically to ‘direct’—the Bank of England. As explained by Salib and Skinner, the powers of direction that HM Treasury has over the Bank of England include a general power of direction “in the public interest”, introduced as part of the post-war legislation that took the Bank into public ownership in 1946;⁷⁸ a reserve power over monetary policy “in extreme economic circumstances”, retained by the Treasury at the time the Bank was granted operational responsibility for monetary policy in 1998 (and subject to stringent triggers as well as procedural and transparency requirements)⁷⁹ and a specific

⁷⁴ See Salib and Skinner (2019), p. 920.

⁷⁵ HM Treasury (2013), [Review of the Monetary Policy Framework](#), Cm. 8588, at 4–5 (UK).

⁷⁶ See Salib and Skinner (2019), p. 922, who argue that ‘a practical example of such coordination is the public exchange of letters between the Bank and HM Treasury when the Bank commenced gilt purchases via its Asset Purchase Facility in 2009. See [letter](#) from Alistair Darling, Chancellor of the Exchequer, HM Treasury, to Mervyn King, Governor, Bank of Eng. (29 January 2009); [letter](#) from Alistair Darling, Chancellor of the Exchequer, HM Treasury, to Mervyn King, Governor, Bank of England (3 March 2009). The letters set out the monetary policy purposes and operation of the facility, and the delegation of the instrument of asset purchases financed by the issuance of central bank reserve to the MPC. HM Treasury also undertook that “the Government will not alter its issuance strategy as a result of the asset transactions undertaken by the Bank of England for monetary policy purposes.”

⁷⁷ Id., 923-924, making the example of an HM Treasury official being permitted to attend and speak at MPC and FPC meetings, yet without voting rights. Additionally, there are formal memoranda of understanding explaining the financial relationships between the two Institutions and their responsibilities regarding resolution planning and financial crisis management.

⁷⁸ Section 4 of the Bank of England Act of 1946, through which the Bank was nationalised, provided for the Treasury’s legal power to direct the Bank. It stated simply that “the Treasury may from time to time give such directions to the Bank as, after consultation with the Governor of the Bank, they think necessary in the public interest”. Notwithstanding its broad formulation there was “an implicit understanding within HMT that it would show considerable restraint in ever resorting to the power and that directions could only be properly made on matters of major policy in respect of which no Governor could fail to acknowledge the right of the Government to decide”. In 1998 the power of direction was amended to include the following limiting caveat “except in relation to monetary policy”. Partly through these six words, the Bank of England was given operational independence over monetary policy. By contrast, in place of the general power of direction, HM Treasury was granted a tightly constrained “reserve power” in the field of monetary policy. Since 2017 HM Treasury has been “precluded from using the 1946 power of direction in relation to the Bank’s functions as the Prudential Regulation Authority”. Id., 924-925.

⁷⁹ Id., 930. The extension of the general HMT’s power of direction “in the public interest” became problematic at the end of the 1990s, since the Labour Government was committed to give the Bank full independence in the area of monetary policy. This goal was achieved through removing monetary policy from HM Treasury’s general power of direction. The Bank of England Act 1998 indeed introduced in

power of direction introduced in Section 61 of the Financial Services Act 2012 (and separate from the general power under the 1946 Act) as a crisis-management tool where public money is at risk, introduced as part of post-crisis legislative reforms.⁸⁰

its place a highly constrained “reserve power”, about which the then Chancellor Gordon Brown explained that he expected the override power “to be exercised rarely, if at all”. This is unsurprising since the reserve power effectively nullifies independence. The reserve power provides that “HM Treasury, after consultation with the Bank, may direct the Bank with respect to monetary policy only if HM Treasury is satisfied that the direction is required in the public interest and by extreme economic circumstances”. “The direction can be immediately effective, but it is time-limited. It ceases to be law within twenty-eight days unless both Houses of Parliament hold a debate and each approve it by resolution, and even then, the direction can only last for a maximum period of three months. While the direction is in effect, the statutory objectives regarding monetary policy do not have effect. The direction can also be used to make consequential modifications to the legislation to relieve the MPC from having to comply with its usual procedural requirements, which may be a hindrance in a time of crisis”. What constitutes an “extreme economic circumstance” has intentionally been left undefined, but the use of the word “extreme” suggests the existence of war or a very severe economic emergency or crisis, of the “once in a lifetime” variety and therefore it sets a much higher bar than “in the public interest”. Id., 930-931.

See also <https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/874/87409.htm>.

⁸⁰ Id., 913-914. These powers and their extension have led commentators to argue that “the Bank of England’s independence from HM Treasury is a complicated affair, and one which has evolved over time in a piecemeal fashion”.

4. THE EUROPEAN CENTRAL BANK

4.1. Accountability of the European Central Bank

The European Central Bank is a relatively “young” central bank. Its independence is enshrined in the Treaty on the Functioning of the European Union (TFEU) in Article 130, which gives it a very strong legal protection, stronger indeed than that afforded to other central banks around the world with statutory independence (whereby one statute may be removed by another). The ECB is *sui generis* in that it is the central bank of the euro area, a jurisdictional area without legal personality. (The legal personality resides in the European Union, Article 47 Treaty on European Union [TEU], not in the euro area).

Since 1992, I have advocated the need for accountable independence of the European System of Central Banks (ESCB).⁸¹ An independent central bank is a particular kind of institution that is independent in some respects, but highly constrained in others: constrained by the goal (established in the law: the Treaty in the case of the ECB, a statute in the case of the Federal Reserve System and Bank of England) and by the demands of democratic legitimacy and accountability.⁸²

In order to assess how the accountability of the ECB in the conduct of monetary policy can be improved, we must assess the current accountability channels.

The accountability of the ECB is ‘diversified’ in line with the traditional articulation of accountability discussed in the introduction (*trias politica*).

First and foremost, the ECB is accountable to the European Parliament according to Article 284 (3) TFEU and Article 15 of the ESCB Statute.

Secondly, the ECB is subject to judicial review by the Court of Justice of the European Union (CJEU), which is the only Court that can judge the legality of the acts and decisions of the ECB according to Article 263 TFEU and Article 35 of the Statute of the ESCB.

Thirdly, the ECB is subject to audit control. There are different layers of audit control. First of all, an external auditor firm has the “full power to examine all books and accounts of the ECB and NCBs” (Article 21.1 of the Statute of the ESCB).⁸³ Secondly, the European Court of Auditors examines the operational efficiency aspects (Article 27.2 of the Statute of the ESCB).⁸⁴ In addition, there is internal audit by a high-level Audit Committee – established by the Governing Council pursuant to Article 9b of the Rules of Procedure of the ECB. The latter enhances the corporate governance of the ECB and the Single Supervisory Mechanism (SSM), covering both central banking and banking supervisory functions, and the Eurosystem.⁸⁵

⁸¹ Lastra (1992).

⁸² See Lastra and Miller (2001).

⁸³ The ECB external auditor is Baker Tilly, see [recommendation](#) on its appointment.

The report of the external auditors is published together with the annual accounts, see page 62 of the 2019 [annual report](#).

⁸⁴ The [European Court of Auditors](#) is one of the 7 EU institutions. It was set up in 1975 as guardian of EU finances.

The European Court of Auditors submit the previous year’s audit reports to the Parliament and the Council every year. The Parliament decides whether to approve the Commission’s budget after reviewing the Court of Auditors’ report. If the Court of Auditors considers the execution satisfactory, it sends a report to the Council and the Parliament mentioning that the European taxpayers’ funds have been properly used. Finally, the Court of Auditors also discusses proposals on EU financial legislation and EU anti-corruption actions. If auditors detect any corruption or irregularity, they notify the European Anti-Fraud Office (OLAF).

When it comes to supervisory data, the ECB and ECA signed an [MOU on Banking supervision in the EU](#).

⁸⁵ Amongst its responsibilities, the [Audit Committee](#) shall receive, at the same time as they are transmitted to the Governing Council, (i) the annual audit opinion on the ECB’s financial statements; (ii) the management letter of the ECB’s external auditor, together with the Executive Board’s response; (iii) the preliminary observation report of the European Court of Auditors (ECA), together with the Executive Board’s response; and (iv) an advance copy of the ECA public report before its publication. See [Audit Charter](#).

Finally, there are also mechanisms of accountability *vis-à-vis* the Council and the Commission, in line with Article 284(3) TFEU and Article 15 ESCB Statute (see Annex).

The cooperation with ‘the executive’ is *sui generis* given the fact that only responsibility for monetary policy (but not fiscal policy) has been transferred from the national to the supranational arena and that, therefore, the ECB has no European fiscal counterpart in the sense that there is [at least not yet] a Euro Treasury or Euro Minister of Finance. The fiscal counterparts remain national; fiscal policy remains decentralised at the level of the Member States, albeit subject to EU rules. The ECB is also accountable to the public and ways to enhance ECB transparency are further discussed below.

The overall accountability of the ECB as the central bank of the euro area needs to be examined in the context of the developments of the GFC and its aftermath, as the ECB has gained additional powers (in the area of supervision) and the impact of its main basic task has changed (effects of unconventional instruments of monetary policy).

4.2. The relationship between the European Central Bank and the European Parliament

On monetary policy, the European Parliament holds the ECB accountable⁸⁶ through the following activities:

1) Monetary Dialogue

The Monetary Dialogue is by far the most important measure of parliamentary accountability in the EU/euro area, a mechanism for the ECB to explain and justify its discretionary decisions in front of the Members of the European Parliament (providing also a source of formal legitimacy). The ECB President⁸⁷ participates in quarterly hearings of the ECON Committee of the European Parliament.⁸⁸ During these quarterly hearings, the President of the ECB delivers a statement on the ECB’s monetary activities and decisions and answers questions from Members of the European Parliament (MEPs) attending the hearing based on reports prepared by an expert panel.⁸⁹

All political groups are represented in ECON.⁹⁰ Other Executive Board members also participate in hearings of this ECON committee to explain the ECB’s reasoning and decisions on specific topics.

The primary law basis for the Monetary Dialogue is Article 284(3) TFEU. The Protocol on the Statute of the ESCB and of the ECB reasserts accountability to the European Parliament in Article 15(3). Formally, the Monetary Dialogue was set up by the European Parliament’s Resolution on “democratic accountability in the third phase of EMU of 4 May 1998” which called for the organisation of a dialogue between the European Parliament and the future ECB on monetary and

⁸⁶ See Fraccaroli et al. (2020). See also Fraccaroli et al. (2018).

⁸⁷ The ECB has had 4 Presidents so far: Wim Duisenberg (1998-2003), Jean-Claude Trichet (2003-2011) and Mario Draghi (2011-2019) and Christine Lagarde (2019 -).

⁸⁸ Through the prism of a principal-agent relationship, the principal is the holder of sovereignty, namely the Euro-area citizens through their elected representatives (European Parliament), and the agent is the ECB. ECB (2002; 45-46): “An integral part of this (...) relationship between principal and agent are provisions on accountability, *i.e.* mechanisms by which the principal holds the agent responsible for its performance. To that end, a system of appropriately designed incentives must be in place”.

⁸⁹ The Monetary Expert Panel has produced papers on related topics to accountability on three previous occasions: in November 2005, in [September 2009](#) and in [March 2014](#). In March 2009, the European Parliament commissioned a study on “Accountability and Transparency in Central Banking”, written by Paul de Grauwe and Daniel Gros.

⁹⁰ Pursuant to [Rule 209](#) of the Rules of Procedure of the European Parliament.

economic affairs, the framework for which dialogue should be confirmed through a mutual agreement.⁹¹

2) Annual Report

“The ECB submits an annual report on its tasks, the activities of the ESCB and the Eurosystem’s monetary policy to the European Parliament, the Council of the EU, the European Commission and the European Council. The report is presented annually to the European Parliament by the ECB President in a dedicated session of the ECON Committee and by the ECB President on the occasion of a plenary debate. The annual accounts of the ECB are part of the annual report.”⁹²

The primary law basis for the presentation of annual reports is Article 284(3) TFEU.⁹³

3) Parliamentary written questions

All Members of the European Parliament (not just ECON members) can address written questions to the ECB, with the aim of clarifying the central bank’s motives and reasoning underlying a certain policy decision. The answers to these questions are signed by the ECB President and published on the ECB’s and the European Parliament’s websites.

There is no legal basis in the Treaty for these written questions. The applicable norm is Rule 140 of the Rules of Procedure of the European Parliament.⁹⁴

The European Parliament is also involved, in a consultative role, in the appointment procedures for the members of the ECB’s Executive Board (and it has a veto right in the case of the Chair and Vice Chair of the Supervisory Board).⁹⁵ In contrast to the ECB’s supervisory function, beyond the Treaty provisions, there is no interinstitutional arrangement that formalises the ECB’s accountability *vis-à-vis* the Parliament in the area of monetary policy.⁹⁶

In the course of 2020, the ECB Governing Council has adopted an unprecedented package of monetary policy measures⁹⁷ to address the fallout of the COVID-19 crisis. This, together with the legal ramifications of the 5 May 2020 decision of the German Constitutional Court and other possible legal challenges in the future call for the reaffirmation and enhancement of the appropriate levels and mechanisms of scrutiny of monetary policy in the euro area, in line with the legal framework established by the Treaty.⁹⁸

With the growing complexity and expansion of central bank responsibilities in the monetary sphere, effective parliamentary scrutiny becomes ever both more important and more challenging, in particular given the distributional and other effects of monetary policy operations.⁹⁹

⁹¹ See European Parliament (1998), “[Resolution on democratic accountability in the third phase of EMU](#)”. See also Rule 135 of the Rules of Procedure of the European Parliament in Annex.

⁹² ECB website, “[Accountability](#)”.

⁹³ See also Article 15 of the ESCB Statute and Rule 135 of the Rules of Procedure of the European Parliament (Statements by the ECB) in Annex.

⁹⁴ See Rule 140 of the Rules of Procedure of the European Parliament (Questions for written answer to the European Central Bank) in Annex. See Rakic (2019).

⁹⁶ The ECB accountability in the discharge of banking supervision since the advent of banking union is subject to a specific regime set down in the SSM Regulation. How the supervisory accountability requirements are to be fulfilled in practice is clarified in an interinstitutional agreement between the European Parliament and the ECB and a MOU between the Council of the EU and the ECB. This paper deals with the “monetary dialogue”, not with the “banking dialogue” (where the SSM, SRM and the pursuit of financial stability are subject to account). See inter alia Amtenbrink (2019).

⁹⁷ See Rakic (2020).

⁹⁸ Through the prism of a principal-agent relationship, the principal is the holder of sovereignty, namely the euro area citizens through their elected representatives (European Parliament), and the agent is the ECB. See ECB (2002; 45-46).

⁹⁹ The notion that very low interest rates and QE have fuelled a surge in asset prices, which mostly benefits the wealthy, has become quite prevalent. See e.g., Cohen-Setton (2014). “[The distributional effect of quantitative easing](#)”. Bruegel blog post 29 October 2014. Paul Tucker

European Parliament/ECON accountability ought to be strengthened to match the expanded range of instruments the ECB uses in the conduct of monetary policy.

4.3. Locus of parliamentary accountability

The adequate locus of accountability for the ECB regarding the conduct of its monetary policy responsibilities resides at the European level, not at the national level. Thus, accountability should be discharged in a way that is congruent with the principle of conferral. Monetary policy is an exclusive competence of the ECB.¹⁰⁰ This is in line with EU law, with the transfer of sovereign monetary powers to the supranational arena and the legitimacy of the Union mechanisms.

The following argument made by the ECB in 2002 remains valid in my opinion:

“[T]he ECB has taken the view that a system of individual accountability of the members of the Governing Council and the Executive Board would be inconsistent with the institutional structure and policy substance. For instance, a system whereby all the members of the Governing Council were held individually accountable by the European Parliament would be inconsistent in the case of the National Central Bank (NCB) Governors, since no EU body plays a role in their appointment. At the same time, neither would it be coherent for NCB Governors to give account of their actions as members of the Governing Council to their national parliaments, as national parliaments would lack the legitimacy to judge how NCB Governors perform their “European” duties – duties which explicitly preclude them from acting as defenders of national interests. From this it follows that the decision-making bodies of the ECB are held collectively accountable for all decisions which they take and it is for the President of the ECB and the other members of the Executive Board to justify and explain the decisions taken collectively to the European Parliament.”¹⁰¹

Recent developments following the May 2020 decision of the German Constitutional Court, and subsequent delivery of a set of confidential documents by the ECB via the Bundesbank to the Bundestag, which then issued a positive opinion on proportionality, raise some concerns from the perspective of the appropriate locus of accountability, since a national legislature (the German Bundestag) was given non-public documents related to the PSPP before the European Parliament.¹⁰²

The response from President Lagarde to a question from Sven Simon, MEP regarding the PSPP judgement,¹⁰³ emphasises the central role that the dialogue with the European Parliament plays in the design of the accountability of the ECB. The speech by Yves Mersch, “In the spirit of European

wrote in his comments that, given that the interest rate is probably close to the fact zero lower bound, he would have combined very easy monetary policy with a macro prudential increase in margin requirements, in order to dampen exuberance in shadow banking markets. Paul Tucker also noted in his comments that over-reliance on monetary support (as opposed to fiscal support) creates risks for financial stability.

¹⁰⁰ Article 282 and Article 127 TFEU. Article 3.4 of the Treaty on European Union and Article 5 as regards the principle of conferral leave no doubt about the exclusive nature of monetary policy.

¹⁰¹ ECB (2002).

¹⁰² It is also a matter of concern that there are some talks that the Bundestag is planning to organise its own “Monetary Dialogues”, Bundestag (2020), [press release](#), 11 September 2020.

¹⁰³ [Letter](#) by President Lagarde to Sven Simon of 29 June 2020 (regarding the PSPP).

*“Regarding your question on the judgement of the German Federal Constitutional Court, the ECB has taken note of the judgement. (...) In line with the **principle of sincere cooperation**, the Governing Council has decided to accommodate this request and to authorise the Deutsche Bundesbank to disclose these documents to the German Federal Government, provided that the non-public elements are treated confidentially. On the same condition, the German Federal Government may share the documents if need be with the German Parliament. As I have said before, **the dialogue between the ECB and the European Parliament is an essential element of the ECB’s accountability**. I thus look forward to continuing discussing with the European Parliament the substance of our monetary policy actions, as also covered in the aforementioned documents and the many types of document that we publish on a regular basis”.* (Emphasis added)

cooperation” of 2 July 2020¹⁰⁴ notes that “In this spirit, the ECB – which is exclusively subject to the jurisdiction of the Court of Justice of the European Union and accountable to the European Parliament – supports the Deutsche Bundesbank in its cooperation with the German Federal Government and the Bundestag.” But there was and there is no obligation.

Draghi’s practice of visiting national parliaments to explain the ECB’s monetary policy decisions, engaging in an ‘exchange of views’ with elected representatives,¹⁰⁵ should not be seen as an obligation (not even a soft obligation) to be accountable to national parliaments.¹⁰⁶ It should simply be seen, in the spirit of cooperation mentioned above, as educating European citizens about the role of the ECB.

It should also be noted that while proportionality is also a mechanism that facilitates transparency and accountability, it needs to be channelled through the established adequate institutional channels. And that these reside at the EU level. This is also in line with the principle of democracy, a founding value of the EU according to Article 2 TEU.¹⁰⁷

The Court of Justice of the EU in its *Weiss* ruling held that the proportionality principle should apply to determine the legal limits on the use of monetary policy action and that proportionality requires that the instruments chosen are ‘necessary’ to achieve the price stability objective. The ECB may thus be called to justify in front of the Court that the measures adopted to fight the pandemic are *necessary* to ensure the effective functioning of its monetary policy and to meet the price stability objective.¹⁰⁸

The topic of ECB accountability, at the core of the September 2020 Monetary Dialogue, is again very topical and important for the future of the ECB and for the future of the EU.

4.4. Ways of improving the Monetary Dialogue

The Monetary Dialogue is an essential mechanism of accountability in the life of the ECB.¹⁰⁹ A number of studies have looked at the history of the Monetary Dialogue, its efficacy and evolution.¹¹⁰

It is interesting to observe that the name ‘Monetary Dialogue’ does not convey the spirit of scrutiny, of giving account, explain and justify that is at the core of accountability. I would recommend that the ‘monetary dialogue’ be renamed as ‘monetary hearings’, as proposed earlier by Guillermo de la

¹⁰⁴ Mersch (2020). “[In the spirit of European cooperation](#)”. Introductory remarks by Yves Mersch, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, at the Salzburg Global webinar, 2 July 2020.

There was a similar debate about this when, during the sovereign debt crisis, President Draghi made seven visits to national parliaments between 2012 and 2017. See Tesche (2018).

¹⁰⁵ Bovens and Curtin (2016).

¹⁰⁶ This is different from Articles 20 and 21 of the SSM Regulation in the exercise of prudential supervision.

¹⁰⁷ Article 2 of the Treaty on European Union firmly establishes the values upon which the Union is founded: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

¹⁰⁸ Lastra and Alexander (2020), id.

¹⁰⁹ Fraccaroli et al. (2018): “A study published in 2004 found that the frequency of the ECB’s appearances before the European Parliament exceeds the average of appearances by other central banks before their respective parliaments. In addition, ECB Executive Board members have participated on numerous occasions in hearings of the ECON committee to explain the ECB’s reasoning and decisions on specific topics”.

¹¹⁰ Collignon and Diessner (2016) note that “Political accountability is a multi-level process. While the European Parliament holds the ECB to account, electors do likewise with MEPs.” They report on the performance of the members of ECON during the seventh parliament and presents answers to a questionnaire submitted to all members of the committee inquiring how they assessed the dialogue themselves. “The seventh parliamentary ECON committee had 99 members, of whom 50 were full members and 49 were substitutes (with some participants having been replaced over time, thus marking a total of 110 MEPs). Of all those, 43 never asked a question during the five-year term of the parliament. With respect to those who have intervened, the average number of questions per session asked by all MEPs was 22.5. (...) The ECON committee was made up of 67 per cent euro area and 32 per cent non-euro area MEPs. Members from the euro area asked 79 per cent of all questions addressed to the ECB president. They found “that while the monetary dialogue may have had little or even negative impact on financial markets, it plays a significant role in informing and involving members of parliament and their constituencies”.

Dehesa.¹¹¹ “In contrast to the Congressional hearings of the chairman of the Fed, which are feverishly expected, widely reported and intensely scrutinised, the European media have long learnt that there will be no news and, understandably they devote little space, if any, to reporting on the Monetary Dialogue.”¹¹² By renaming the Monetary Dialogue as hearings, they would be treated less as a ‘lecture’ or statement by the ECB President to MEPs and more as an opportunity to explain and justify the actions and decisions taken.¹¹³

The Monetary Dialogue is particularly important when the ECB navigates through a crisis such as the GFC and more recently COVID-19. Crises give rise to extraordinary measures, leading to increased attention toward central banking policies¹¹⁴, making the scrutiny of monetary policy ever more necessary and ever more complex.¹¹⁵

The effectiveness of parliamentary hearings depends in part on the topics which are discussed.¹¹⁶ Though the tone of the debate¹¹⁷ need not be adversarial, it should befit the nature of the hearing, reflecting oversight, adequate deliberation and a duty by the ECB to explain and justify in front of MEPs how the ECB evaluates the effectiveness of its monetary policy operations (in particular when resorting to non-conventional instruments) and how it balances its primary and the secondary objectives in accordance with the Treaty requirements.¹¹⁸

Michelle Chang and Dermot Hodson¹¹⁹ contrast the European Parliament’s Monetary Dialogue which has run since 1998, with the Economic Dialogue, a forum launched in 2011 to hold EU institutions and Member States involved in EU economic governance to account. They argue that the Monetary Dialogue has helped to promote greater transparency over euro area monetary policy, although it would benefit from focusing on a narrower range of policy issues and closer cooperation between MEPs and that though the Economic Dialogue is a welcome addition to the EU’s economic governance architecture, its effectiveness has been limited due to a lack of resources and institutional constraints.

Chang and Hodson call for both the Monetary and Economic Dialogues to be delegated to a new ECON Euro Area Oversight Subcommittee (EAOS). I second the establishment of a euro area specialised

¹¹¹ This was also proposed by de la Dehesa (2009): “The ECON Committee should try to reach an agreement with the ECB President in order to transform the present Monetary Dialogue into a Monetary Hearing.”

¹¹² Id.

¹¹³ See also European Parliament (2014). “[Monetary Dialogue 2009-2014: Looking Backward, Looking Forward](#)”. Study for the Committee on Economic and Monetary Affairs, p. 32: “The practice, however, is less satisfactory. The President of the ECB appears before the ECON Committee with carefully scripted preliminary remarks, designed to shape the discussion. During the following Q&A part, he fields questions from any member of the Committee. The questions cover a bewildering range of issues and speakers can only ask one follow-up question. The result is an unstructured and often superficial exchange of views.”

¹¹⁴ Fracarroli et al. (2020), 4.

¹¹⁵ Coeuré (2018).

¹¹⁶ European Parliament (2014). “[Monetary Dialogue 2009-2014: Looking Backward, Looking Forward](#)”. Study for the Committee on Economic and Monetary Affairs: “Earlier assessments of the Monetary Dialogue have often been critical. Academics have observed lack of forcefulness and insufficient qualification of MEPs; a tendency to talk cross-purpose; the absence of common grounds or concerns between ECB and EP, reinforced by the large size of the ECON; questions have covered less often monetary and more frequently fiscal policy; and on most issues the ECB holds the discursive monopoly. Nevertheless, in their study of previous parliaments, Eijfinger and Mujagic (2004) observed that in 71 % of the cases the ECB had implemented changes requested by ECON.”

¹¹⁷ Fracarroli et al. (2020): “The tone of the deliberations may be driven by negative economic conditions, regardless of the central bank’s ability to cope with them and some politicians may assume a more aggressive tone for electoral reasons, regardless of the central bank’s performance in fulfilling the objective”.

¹¹⁸ In 2005, Anne Siebert noted in a [briefing note](#) for ECON at that “one issue that the European Parliament has been greatly interested in is the ECB’s attitude towards its secondary goal”. For a recent report, see Lastra and Alexander (2020).

¹¹⁹ Chang and Hodson (2019). They summarise “the monetary dialogue in action”: “It takes place four times a year, commencing with an introductory statement by the ECB president and followed by questions from the ECON MEP members.” A monetary expert panel (economists and a few lawyers) supports the work of ECON by providing briefing papers and studies on a range of issues related to monetary policy and suggesting questions that MEPs can ask during the Monetary Dialogue. “Since 2006, for each hearing two topics are identified for which the experts write papers.(...). **The dialogue is conducted between the ECB and individual MEPs.** Although MEPs speak on behalf of their constituents and, perhaps, their political group, they do not speak for the EP. The EP’s own-initiative report in response to the ECB’s annual report is more representative of the institution in this regard since it is voted on in plenary prior to the annual debate with the ECB president.”

subcommittee to scrutinise monetary policy. Size is an important consideration.¹²⁰ As stated above, I proposed in 1997 - in the context of an inquiry into the accountability of the Bank of England - that the House of Commons Treasury Committee should create a sub-committee with the specific role of monitoring the Bank of England and suggested that it be chaired by a member of the opposition (not of the ruling party).

The issue of technical expertise can be a double-edged sword,¹²¹ as politicians and MEPs (as well as judges) need not be trained in monetary affairs. But holding to account an independent central bank requires such technical expertise¹²² (as well as adequate resources). Populist movements have criticised the institutional tenets of central banks (technocracies) including the ECB. It has been observed that the change of public perception towards central banks might put their independence at risk.¹²³ Thus, the discussion about legitimacy and accountability is ever more relevant.

The European Parliament (ECON) should also have a formal enhanced role (not simply consultative) in the appointment procedure of the ECB President and other members of the Executive Board of the ECB. As stated in part 2 of this report, though the UK does not have a formal vetting/confirmation power (as opposed to the US), a negative 'opinion' by the TSC carries a heavy weight (the appointment of Charlotte Hogg as deputy governor of the Bank of England discussed above being a case in point). The role of the TSC in the appointment process of the Governor and other senior officials has indeed become more 'muscular' in recent years. Though the EP opinion carries 'heavy weight', as explained by Rakic, in the case of Yves Mersch, the Council appointed him nevertheless and the EP subsequently approved its appointment as Vice-Chair thus 'clearing' him.¹²⁴

Antenbrink and Van Duin (2009) have argued that the EP has achieved a level of oversight for euro area monetary policy beyond that envisaged in the Treaty, even if doubts remain about whether the ECB is being held sufficiently to account. The fact that the minutes of the Monetary Dialogue and the expert reports are published in ECON's website – contributes in part to the success of the Monetary Dialogue.¹²⁵

4.5. Transparency

Though the Monetary Dialogue has contributed to provide both ex-post scrutiny by the EP and "an opportunity for the ECB to enhance its transparency" (Chang and Hodson) and, despite commendable

¹²⁰ European Parliament (2014). "[Monetary Dialogue 2009-2014: Looking Backward, Looking Forward](#)". Study for the Committee on Economic and Monetary Affairs, p. 33: "**Given its size, the ECON Committee is a small parliament in itself.** As befits a parliament, its members represent the whole spectrum of nationalities and political parties. All of them are allowed to attend and take part in the Monetary Dialogue. This means that it is not a dialogue at all: the President of the ECB addresses a large crowd. The very idea that the ECB is brought to account is absent from the start. The obvious solution would be that the President of the ECB only meets a subcommittee, with the other ECON members allowed to attend – possibly in reserved seats separate from those for the public at large – but not to intervene. Such an arrangement should be an internal matter for the Parliament to settle and should not require any new treaty."

¹²¹ A key rationale for independence (technical expertise) can also be a hindrance in terms of democratic accountability as politicians can find monetary policy too technical. This notwithstanding, those conducting the hearings should have an understanding of monetary affairs. See Clayes et al. (2014), *passim*.

¹²² Lastra and Goodhart (2017).

¹²³ Id. Reliance on "experts" (as the Brexit referendum evidenced) has become controversial.

¹²⁴ Rakic (2019). The Executive Board appointment procedure is set out in the Treaty on the Functioning of the European Union (TFEU), Article 283(2). The European Council has the power to appoint the board, after consulting the European Parliament and the ECB's Governing Council. The Parliament adopted its own rules to define internal procedures leading up to the adoption of a formal opinion (Rule 130, Rules of Procedure of the European Parliament). The Parliament has used this opinion-giving power to convey its positions on the candidates and the process itself. Greater democratic legitimacy in ECB appointment procedures has been advocated by Positive Money and Transparency International, recommending a formal EP confirmation role in the Executive Board appointments.

¹²⁵ Antenbrink and Van Duin (2009).

efforts to become more transparent, the ECB been criticised for being an “unaccountable and opaque” institution.¹²⁶

As stated in Part 1 transparency has to do with the provision of information¹²⁷ and facilitates accountability. In an era in which communication and forward guidance have become an important tool of monetary policy, the central bank guides the markets.

Currently the ECB publishes:¹²⁸

- The [Economic Bulletin](#) (formerly Monthly Bulletin) which presents the economic and monetary information that form the basis for the Governing Council’s policy decisions. It is published eight times a year, two weeks after each monetary policy meeting.
- The Eurosystem’s consolidated [weekly financial statement](#) which provide information on monetary policy operations, foreign exchange operations and investment activities.
- The [press conferences](#) and the many press statements which the ECB holds after each Governing Council monetary policy meeting setting key interest rates for the euro area, i.e. every six weeks.
- The [monetary policy accounts](#) of the Governing Council’s discussions (which are published four weeks after each monetary policy meeting). These monetary policy accounts, which were introduced in 2015 during Draghi’s presidency, have been regularly publishes since then. The intention of these accounts is not to provide a verbatim transcript but rather a summary of the Governing Council members’ monetary policy discussions. When a monetary policy decision is taken, the President of the ECB makes an introductory statement to the press conference¹²⁹ and four weeks after the ECB publishes an account of the Governing Council’s monetary policy discussions to make the rationale behind the decisions more transparent.¹³⁰ The account typically begins with an overview of the financial market and economic and monetary developments. The ECB Governing Council’s discussions are then summarised, and economic and monetary analyses are presented along with the monetary policy viewpoints expressed. These monetary policy accounts do not report how individual members of the Governing Council voted or put names to comments made by individuals. Article 10.4 of the ESCB Statute prescribes that only the outcome can be published but not the minutes: “The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberation public.” Furthermore, the voting records are not published in order to protect the personal independence of the members of the Governing Council, who could otherwise be subject to undue political pressure from the country/countries where they come from. It is for these reasons (the requirement of Article 10.4 ESCB Statute, the protection of personal independence and a civil law tradition of not publishing dissenting opinions to reinforce collegiality) that the ECB does not publish the minutes, nor the voting records nor the dissenting opinions.

Effective audit control, as stated earlier in the case of the Bank of England, provides a basis and input for subsequent parliamentary scrutiny and can enhance transparency.

¹²⁶ Tesche (2019). See also Buiter (1999); Transparency International (2017). [“Two Sides of the Same Coin? Independence and Accountability of the European Central Bank”](#).

¹²⁷ According to its own [website](#): “Transparency means that the central bank provides the general public and the markets with all relevant information on its strategy, assessments and policy decisions as well as its procedures in an open, clear and timely manner. (...) Transparency helps the public to understand the ECB’s monetary policy. Better public understanding makes the policy more credible and effective.”

¹²⁸ See ECB website, [“Accountability”](#).

¹²⁹ See e.g., [introduction to the press conference](#) by President Lagarde on 16 July 2020.

¹³⁰ For the decision of 16 July 2020, see [‘monetary account’](#) of 20 August 2020.

5. CONCLUDING OBSERVATIONS

With independence comes accountability, hence the term ‘accountable independence’.

Fabian Amtenbrink argued in his book¹³¹ that the existing democratic deficit of the European Central Bank is an expression of the democratic deficit of the EU at large, rather than a particular deficiency of the institution. In contrast, Chiara Zilioli¹³² has stated that the ECB is accountable if we use a new ‘economic paradigm of accountability’ rather than the traditional ‘formalistic’ notion of accountability based on the theory of the division of powers. Zilioli argues that the ECB is highly transparent and that it has developed both an inter-institutional dialogue and a dialogue with financial markets, thus facilitating the disclosure of information with regard to its activities and *modus operandi*.

When the ECB was created, it was influenced by the Bundesbank model of stability and independence. The Bundesbank Law contained few provisions regarding the accountability of the central bank, relying instead on the support of public opinion, consensus rather than dissent and the statutory objective to legitimise its existence in a democratic society. This contributes to explain, in my opinion, why accountability may have only played a ‘subsidiary role’ in the negotiations that led to the establishment of the ECB.

The independence of the ECB is anchored in the Treaty, granting it a greater level of protection than statutory central bank independence. The treaty is the result of a political compromise amongst sovereign states that have voluntarily transferred monetary powers – important attributes of sovereignty – from the national to the supranational arena. In contrast, in the UK (as well as in the US) it is possible to change the statutory framework of the Bank of England (or of the Fed).

The complexity that the ECB faces in the discharge of its monetary policy responsibilities arises from the fact that:

- The fiscal counterparty is not European, but national Ministries of Finance;
- There are different national interests;
- There are different national parliaments with different and conflicting interests; and
- The national governors are appointed at home, need to operate in the interest of the whole euro area, and can be put under pressure at home.

This jurisdictional complexity that the ECB confronts is not faced by the Bank of England in the UK nor by the Fed in the US and justifies the strong protection afforded to it by Article 130 TFEU.

Given the extension of monetary policy instruments post GFC and post Covid-19, the need for adequate accountability is of paramount importance for the future of the ECB and of European integration in the light of the distributional and other effects of monetary policy operations.

Due to the transfer of monetary powers (exclusive competence, principle of conferral) the locus of accountability is European, not national.

Accountability cannot be guaranteed by the fact that the initial stage of its creation is legitimate democratically. Accountability is judged through the life of the institution. “It is in its continuing operations and policies that the institution must be subject to appropriate mechanisms of accountability.

¹³¹ See Amtenbrink (1999).

¹³² See Zilioli (2003).

And if the ECB gives ‘proper account’, explains and justifies the actions or decisions taken (or omitted) in the exercise of its responsibilities, is subject to judicial review and to audit control”¹³³, and responds to the European Parliament through a meaningful Monetary Dialogue (renamed as Monetary Hearings) along the lines proposed in this report, then it can be judged to be sufficiently accountable. The jury is out!

¹³³ Lastra and Louis (2013).

ANNEX

Article 284 TFEU

1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank. The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.
2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.
3. The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis. The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

Article 15 of the ESCB Statute

- 15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.
- 15.2. A consolidated financial statement of the ESCB shall be published each week.
- 15.3. In accordance with Article 284 (3) of this Treaty, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.
- 15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Rule 134 of the Rules of Procedure of the European Parliament (Statements by the Court of Auditors)

1. In the context of the discharge procedure or of Parliament's activities in the sphere of budgetary control, the President of the Court of Auditors may be invited to make a statement to Parliament in order to present the comments contained in the Annual Report, special reports or opinions of the Court, or in order to explain the Court's work programme.
2. Parliament may decide to hold a separate debate, with the participation of the Commission and the Council, on any questions raised in such statements in particular when irregularities in financial management have been reported.

Rule 135 of the Rules of Procedure of the European Parliament (Statements by the European Central Bank)

1. The President of the European Central Bank shall be invited to present to Parliament the Bank's Annual Report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year.
2. This presentation shall be followed by a general debate.
3. The President of the European Central Bank shall be invited to attend meetings of the committee responsible at least four times a year in order to make a statement and to answer questions.

4. If they or Parliament so request, the President, Vice-President and other Members of the Executive Board of the European Central Bank shall be invited to attend additional meetings.
5. A verbatim report of the proceedings under paragraphs 3 and 4 shall be drawn up.

Rule 140 of the Rules of Procedure of the European Parliament (Questions for written answer to the European Central Bank)

1. Any Member may put a maximum of six questions for written answer per month to the European Central Bank in accordance with criteria laid down in an annex to these Rules of Procedure (1). The content of questions shall be the sole responsibility of their authors.
2. Such questions shall be submitted in writing to the Chair of the committee responsible. On receiving such questions, the Chair of the committee responsible shall notify them to the European Central Bank. Issues concerning the admissibility of a question shall be decided by the Chair of the committee responsible. The questioner shall be notified of any such decision.
3. Such questions, as well as the answers to them, shall be published on Parliament's website.
4. If a question for written answer has not received a reply within six weeks, it may, at the request of its author, be included on the agenda for the next meeting of the committee responsible with the President of the European Central Bank.

REFERENCES

- Amttenbrink, F. (1999). *The Democratic Accountability of Central Banks: A Comparative Study of the European Central Bank*, Oxford: Hart Publishing.
- Amttenbrink, F. (2019). "The European Central Bank's intricate independence versus accountability conundrum in the post-crisis governance framework", *Maastricht Journal of European and Comparative Law*, <https://journals.sagepub.com/doi/full/10.1177/1023263X18822789>.
- Amttenbrink, F., Van Duin, K.P.S. (2009). "The European Central Bank before the European Parliament: theory and practice after ten years of monetary dialogue". *European Law Review*, Vol. 34, No. 4.
- Balls, E., Howat, J., Stansbury, A. (2016). "Central Bank Independence Revisited: After the Financial Crisis, What Should a Model Central Bank Look Like?", M-RCBG Associate Working Paper No. 67, Harvard Kennedy School.
- Bank for International Settlements. (2009), "Issues in the governance of central banks", BIS Report 18 May 2009.
- Bank of England. (2014). "Transparency and accountability at the Bank of England", 11 December 2014. <https://www.bankofengland.co.uk/-/media/boe/files/news/2014/december/transparency-and-the-boes-mpc-response>.
- Bovens, M., Curtin, D. (2016). "An Unholy Trinity of EU Presidents?: Political Accountability of EU Executive Power", *In The End of the Eurocrats' Dream: Adjusting to European Diversity*, edited by Chalmers – Jachtenfuchs – Joerges, Cambridge, Cambridge University Press.
- Bovens, M. (2007). "Analysing and Assessing Accountability: A Conceptual Framework". *European Law Journal*, Volume 13, Issue 4: pp. 447-468.
- Briault, C., Haldane, A., King, M. (1996). "Central bank independence and accountability: theory and evidence". Bank of England. <https://www.bankofengland.co.uk/-/media/boe/files/working-paper/1996/independence-and-accountability.pdf?la=en&hash=271D151DB78B28465AF13A73E4B0ACDABD38C105>.
- Buchanan, J.M. (1975). "The Limits of Liberty: Between Anarchy and Leviathan". Chicago: University of Chicago Press.
- Buiter, W. (1999). "Alice in Euroland", *Journal of Common Market Studies*, 1999, 37, 2.
- Chang, M., Hodson, D. (2019). "Reforming the European Parliament's Monetary and Economic Dialogues: Creating Accountability through a Euro Area Oversight Committee", (in *The European Parliament in times of EU crisis: Dynamic and Transformation* ed. by Olivier Costa, 2019), 343-364. London: Palgrave.
- Clayes, G., Hallerberg, M., Tschekassin, O. (2014). "European central bank accountability: How the monetary dialogue could evolve". Bruegel Policy Contribution, Bruegel, 2014.
- Coeuré, B. (2018). "Central banking in times of complexity". Panel remarks at a conference on the occasion of Sveriges Riksbank's 350th anniversary, Stockholm, 25 May 2018, European Central Bank.
- Collignon, S., Diessner, S. (2016). "The ECB's monetary dialogue with the European Parliament: efficiency and accountability during the Eurocrisis?". *Journal of Common Market Studies*, Volume 54, Issue 6: pp. 1296-1312.

- de Boer, N. and van 't Klooster, J. (2020). "The ECB, the courts and the issue of democratic legitimacy after Weiss", forthcoming in the *Common Market Law Review*.
- de la Dehesa, G. (2009). "Improving ECB's Accountability and Transparency". Study for the European Parliament's Committee on Economic and Monetary Affairs, September 2009. <https://guillermodeladehesa.com/files/0006.1300880231.FBBC4328YDFV6638ESQY4371EMVX3999.pdf>.
- Debelle, G., Fischer, S. (1994). "How Independent Should a Central Bank Be?", in *Goals, Guidelines, and Constraints Facing Monetary Policymakers: Proceedings of a conference held in June 1994*, 195 – 197, Fuhrer ed.
- Dhonte, P., Kapur, I. (1997). "Towards a Market Economy: Structures of governance", IMF Working Paper No. 11, (Washington, 1997).
- European Central Bank (2002). "The accountability of the ECB", , ECB Monthly Bulletin, November 2002.
- Fraccaroli, N., Giovannini, A., Jamet, J.-F. (2018). "The evolution of the ECB's accountability practices during the crisis", ECB Economic Bulletin Issue 5/2018.
- Fraccaroli, N., Giovannini, A., Jamet, J.-F. (2020). "Central banks in parliaments: a text analysis of the parliamentary hearings of the Bank of England, the European Central Bank and the Federal Reserve, ECB Working Paper Series No. 2442, July 2020, <https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2442~e78be127c0.en.pdf?59c45a16b52d3592ebb8244b8ff0a7d5>.
- Goodhart, C., Meade, E. (2004), "Central Banks and Supreme Courts", *Moneda y Crédito* 218 (2004).
- Hüpkes, E.H.G., Quintyn, M.G., Taylor, M.W. (2005). "The Accountability of Financial Sector Supervisors: Principles and Practice", IMF Working Paper 05/5. <https://www.imf.org/external/pubs/ft/wp/2005/wp0551.pdf>.
- IMF. (2000). "Codes of Good Practice on Transparency", (2000).
- Lastra, R., Garicano, L. (2010). "Towards a new Architecture for Financial Stability: Seven Principles", *Journal of International Economic Law*, Vol. 13, No. 3, September 2010.
- Lastra, R. (1992). "The Independence of the European System of Central Banks", *Harvard International Law Journal*, Spring 1992.
- Lastra, R. (1996). "Central Banking and Banking Regulation", *Financial Markets Group of the London School of Economics*.
- Lastra, R. (1997). "Accountability of the Bank of England". First Report. House of Commons – Treasury Committee, Session 1997-1998, London, 27 October 1997.
- Lastra, R. (2006). "Legal Foundations of International Monetary Stability". Oxford University Press.
- Lastra, R. (2010). "Central Bank Independence and Financial Stability". Banco de España, 51 *Estabilidad Financiera*, 18.
- Lastra, R. (2011). "Keeping tabs on the Bank. Or, as they say, Quis custodiet ipsos custodes?", *Parliamentary Brief*, July 2011.
- Lastra, R. (2015). "International Financial and Monetary Law", Oxford University Press.

- Lastra, R., Alexander, K. (2020). "The ECB's Mandate: Perspectives on Sustainability and Solidarity", Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020.
[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648813/IPOL_IDA\(2020\)648813_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648813/IPOL_IDA(2020)648813_EN.pdf).
- Lastra, R., Amtenbrink, F. (2008). "Securing Democratic Accountability of Financial Regulatory Agencies – A Theoretical framework", in *Mitigating Risk in the Context of Safety and Security. How Relevant is a Rational Approach?*, edited by de Mulder Rotterdam: Erasmus School of Law & Research School for Safety and Security (OMV), pp 115-132, ISBN 987-90-5677-0686-6.
- Lastra, R., Goodhart, C. (2017). "Populism and Central Bank Independence", *Open Economies Review* 29, pp. 49–68 (2017), <https://doi.org/10.1007/s11079-017-9447-y>.
- Lastra, R., Louis, J.-V. (2013). "European Economic and Monetary Union: History, Trends, and Prospects". *Yearbook of European Law*, Volume 32, Issue 1, 2013, pp. 57–206.
- Lastra, R. Miller, G. (2001). "Central Bank Independence in Ordinary and Extraordinary Times", in Kleineman (ed), *Central Bank Independence. The Economic Foundations, the Constitutional Implications and Democratic Accountability*. The Hague: Kluwer Law International.
- Lastra, R., Shams, H. (2001). "Public Accountability in the Financial Sector", in Ferrán and Goodhart (eds.), *Regulating Financial Services and Markets in the XXIst Century*, Hart Publishing, Oxford, 2001.
- Lawson, G. (1994). "The Rise and Rise of the Administrative State", 107 *Harvard Law Review*.
- Majone, G. (1994). "Independence versus Accountability? NonMajoritarian Institutions and Democratic Government in Europe", *EUI Working Paper*, Florence: European University Institute, 1994.
- Memorandum of Understanding between the National Audit Office and the Bank of England, at <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/national-audit-office-and-the-boe.pdf>.
- Miller, G.P. (1986). "Independent Agencies" *Supreme Court Review* 41.
- Oliver, D. (1994). "Law, Politics and public Accountability: The Search for a New Equilibrium", *P. L.* 246 and 248.
- Rakic, D. "European Central Bank appointments: Role of the European Parliament", Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, July 2019 at [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638413/IPOL_STU\(2019\)638413_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638413/IPOL_STU(2019)638413_EN.pdf).
- Rakic, D. "The ECB's Monetary Policy Response to the COVID-19 Crisis", Briefing, *ECON in focus*, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, June 2020.
- Salib, M., Skinner, C. (2019). "Executive Override of Central Banks: A Comparison of the Legal Frameworks in the United States and the United Kingdom", *The Georgetown Law Journal*, 2019, Vol. 108.
- Schonhardt-Bailey, C. (2015). "Explanations and Accountability: Deliberation in UK Select Committees". LSE, September 2015.

<https://www.lse.ac.uk/government/Assets/Documents/pdf/research-groups/pspe/working-papers/TSC-EAC-paper-full-for-Toronto-Oct2015.pdf>.

- Strauss, P.L. (1984). "The Place of Agencies in Government: Separation of Powers and the Fourth Branch", (1984) 84 Columbia Law Review 573.
- Tesche, T. (2019). "Instrumentalizing EMU's democratic deficit: the ECB's unconventional accountability measures during the eurozone crisis", *Journal of European Integration*, Vol. 41, No. 4, p. 447.
- Tucker, P. (2018). "Unelected Power: The Quest for Legitimacy and the Regulatory State", Princeton University Press.
- UK [House of Commons] Treasury Committee. (2011). Report on the "Accountability of the Bank of England",
<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/874/874.pdf>.
- UK [House of Commons] Treasury Committee. (2012). "Accountability of the Bank of England: Response from the Court of the Bank to the Twenty-first Report from the Committee",
<https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1769/1769.pdf>.
- UK Government. (2016). "Bank of England and Financial Services Bill given royal assent. Parliament passes the Bank of England and Financial Services Act". 4 May 2016,
<https://www.gov.uk/government/organisations/hm-treasury>.
- Verhoeven, A. (2002). "The European Union in Search of a Democratic and Constitutional Theory". The Hague: Kluwer Law International.
- Warsh, K. (2014). "Transparency and the Bank of England's Monetary Policy Committee", December 2014, available at
https://www.hoover.org/sites/default/files/transparency_and_the_bank_of_englands_monetary_policy_committee.pdf.
- Zilioli, C. (2003). "Accountability and Independence: Irreconcilable Values or Complementary Instruments for Democracy? The Specific Case of the European Central Bank", in Vandersanden et al (eds), *Mélanges en Hommage à Jean-Victor Louis*. Brussels: ULB.

This paper analyses the accountability mechanisms of the European Central Bank and of the Bank of England and focuses on parliamentary accountability for the monetary policy functions. The paper suggests ways to improve the Monetary Dialogue between the ECB and the Committee on Economic and Monetary Affairs (European Parliament).

This document was provided by Policy Department A at the request of the Committee on Economic and Monetary Affairs (ECON).
